

No. 16002 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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HAROLD ROBERTS, et al., Appellants,

vs.

FEDERAL CROP INSURANCE CORPORA-  
TION, Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Eastern District of Washington,  
Northern Division

FILED

JUL 15 1958

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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In The Superior Court of the State of  
Washington, County of Douglas

No. 8133

HAROLD ROBERTS, RALPH McLEAN, ROBERT JESSUP,  
GEO. A. MURISON, ANDREW G. NILLES, H. E. McDON-  
ALD, W. H. McDONALD, M. E. SCHEIBNER, THEO-  
DORE B. RICE, LOREN W. PENDELL, J. E. THOREN,  
E. O. McLEAN, E. G. BRANSCOM, S. A. BUCKINGHAM,  
R. E. BUCKINGHAM, DAVIS BROS., DAVID G. DAVIS,  
T. R. DAVIS, FRANK MILLER, LLOYD McLEAN,  
CLAUDE MILLER, MILLER BROS., E. E. SMITH,  
CLYDE W. MILLER, RUSSELL H. HUNT, EDWIN MIL-  
LER, CLARENCE DAVIS, TERESSA M. DAVIS, EUGENE  
FREDERICK, J. W. BUOB & SONS, JOHN A. DANIEL-  
SON, W. J. HAWES, GEO. JORDAN & SONS, DALE  
LEANDER, LUCILE E. BESEL, CARL H. VIEBROCK,  
ORVAL SUPPLEE, CLARENCE R. EDGEMON, E. V.  
VAUGHN, CHARLES D. OLIN and JAMES EDGEMON,  
CLARENCE ADAMS and DAVID ADAMS, Plaintiffs,

vs.

THE FEDERAL CROP INSURANCE CORPORATION, a Gov-  
ernment Corporation, Defendant.

COMPLAINT

Come now the plaintiffs and for a cause of action  
against the defendant allege as follows:

I.

That all the above named plaintiffs are farmers  
farming lands in Douglas County, Washington,  
and all are holders of policies of crop insurance  
issued by defendant.

II.

That the defendant is a government corporation

established under the Department of Agriculture and does business in Douglas County, Washington, through agents duly appointed by said Corporation. [1]\*

### III.

That each of the above named plaintiffs seeded winter wheat in the late summer of 1955, which said winter wheat was found to be a total loss in the Spring of 1956 when the snow melted off the land.

### IV.

That the insurance policy, in the insuring clause, reads as follows:

“In consideration of the representations and provisions in the application upon which this policy is issued, which application is made a part of the contract, and subject to the terms and conditions set forth or referred to herein, the Federal Crop Insurance Corporation (hereinafter designated as the Corporation) does hereby insure \* \* \* (Hereinafter designated as the insured) against unavoidable loss on his wheat crop due to drought, flood, hail, wind, frost, winter-kill, lightning, fire, excessive rain, snow, wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board of Directors of the Corporation.”

### V.

That paragraph entitled “8. Insurance period” of said insurance policy reads as follows:

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\* Page numbers appearing at bottom of page of Original Transcript of Record.

“Insurance with respect to any insured acreage shall attach at the time the wheat is seeded.” \* \* \*

VI.

That paragraph entitled “16. Time of loss.” of said insurance policy reads as follows:

“Any loss shall be deemed to have occurred at the end of the insurance period, unless the entire wheat crop on the insurance unit was destroyed earlier, in which event the loss shall be deemed to have occurred on the date of such damage as determined by the Corporation.”

VII.

That paragraph entitled “6. Coverage per acre.” reads as follows:

“The coverage per acre established for the area in which [2] the insured acreage is located shall be shown by practice(s) on the county actuarial table on file in the county office. The coverage per acre is progressive depending upon whether the acreage is (a) First Stage—released and seeded to a substitute crop, (b) Second Stage—not harvested and not seeded to a substitute crop, or (c) Third Stage—harvested.”

VIII.

That on April 9, 1956, after it was determined that the seeded crop was a total loss, the plaintiffs, at a meeting at St. Andrews, Washington, received information from one Creighton Lawson, Washington State Director of the defendant Corporation, that no claims would be paid to the plaintiffs for the loss sustained to the 1956 wheat crop if

plaintiffs made claims under the Sections of the policy quoted herein.

### IX.

That as a result of the repudiation of the contract by the defendant, plaintiffs, in order to mitigate their damage, were forced to reseed the acreage on which the winter wheat crop had been lost at a cost of \$6.50 per acre, and that plaintiffs lost crop on and reseeded approximately 25,000 acres.

### X.

That, depending on the yield of the 1956 crop as reseeded, the above mentioned repudiation of the contract by defendant may result in further damage to the plaintiffs in an amount equal to the difference between the actual amount harvested and the insured amount of wheat and that in order to perfectly protect the plaintiffs the Court should direct that the insurance be reinstated.

Wherefore, Plaintiffs pray for damage in an amount equal to the sum determined by multiplying the number of insured acres reseeded by \$6.50 per acre plus interest; for judgment reinstating the insurance contract; for their costs and disbursements herein [3] expended; and for such other and further relief as to the Court may seem just and equitable.

KIMBALL & CLARK,

/s/ By NED W. KIMBALL,

Attorneys for Plaintiffs.

Duly Verified.

[Endorsed]: Filed September 4, 1956.

[Title of District Court and Cause.]

AMENDED ANSWER; COUNTER-CLAIM

Comes now the defendant, United States of America, through William B. Bantz and Robert L. Fraser, attorneys in the office of the United States Attorney for the Eastern District of Washington, and answer the complaint in the above entitled case as follows:

I.

Admit Paragraph I of the complaint with the exception that the defendant denies that it had issued policies of insurance to the parties plaintiff named as follows: Theodore B. Rice, E. G. Banson, Frank Miller, Claude Miller, Teressa M. Davis, Geo. Jordan & Sons, Dale Leander, Clarence Adams.

II.

The defendant will admit Paragraphs II, III, IV, V, VI, and VII.

III.

The defendant denies Paragraph IX of the complaint and alleges [15] that a meeting of wheat producers in St. Andrews, Washington, on April 9, 1956, Creighton Lawson, Washington State Director for defendant, informed those present that if claims for loss of 1956 wheat production were made at that time, such claims, in his opinion, would be rejected, and that he was authorized to speak for the Corporation; and said statement was in accord with provisions of the act and the wheat crop insurance contracts.

## IV.

The defendant denies Paragraph IX except that defendant is without knowledge or information sufficient to form a belief as to the truth of the averment that the cost of reseeding wheat was \$6.50 per acre; and alleges further that parties plaintiff have reseeded an aggregate of 16,003.1 acres according to their own certified wheat crop insurance acreage reports filed by them with defendant pursuant to § 3 of their policies of insurance.

## V.

Defendant denies Paragraph X by reason of the fact that it does not understand what this paragraph means, but alleges that the defendant, under the terms of the contracts could not have and has not repudiated any 1956 wheat crop insurance contracts with any of the parties plaintiff, all of which contracts are still in full force and effect, a fact that they recognized by filing acreage reports reporting their reseeded acreage.

Wherefore, the defendant prays that the suit of the plaintiffs be dismissed with prejudice, with costs to the defendant, and for such other and further relief as the court may feel just and equitable, and further that the defendant sets forth the following facts as a counter-claim.

## I.

The defendant alleges that none of the insured plaintiffs have paid their 1956 premiums as stated in their complaint. Said premiums [16] are cal-



culated in accordance with paragraph 12 of the policy and are earned when the acreage is seeded although demands for payment are not made at that time. The premium note (Application No. E.) provides that if the premium is not paid by the discount date shown in the policy, which for Washington is June 30, the premium shall be increased by 10% and the unpaid premium or any balance thereof shall be subject to interest at 6% at the end of each 12 months period. Exhibit A enclosed herewith and by reference thereto made a part hereof shows the contract number and the amount of premium due from each plaintiff.

Wherefore, the defendant prays for the amount alleged in this counter-claim as shown in Exhibit A attached hereto, plus the 10% increase in the premium and 6% interest to date.

/s/ WILLIAM B. BANTZ,  
United States Attorney,  
/s/ ROBERT L. FRASER,  
Assistant United States  
Attorney.

Acknowledgment of Service Attached. [17]

Federal Crop Insurance Corporation  
Department of Agriculture  
Washington

September 27, 1956

I hereby certify that annexed is a true copy of documents and papers on file in the office of Federal Crop Insurance Corporation and in my cus-

tody relating to wheat crop insurance contract No. 91-009-6-209 between said Corporation and Harold Roberts, Route 1, Coulee City, Washington described as follows:

(1) Application for Crop Insurance on Wheat (For 1956 and Succeeding Crop Years), State and county code and contract number 91-009-6-209, signed by Harold Roberts, applicant, under date of September 12, 1955, accepted by Federal Crop Insurance Corporation on September 23, 1955, with copy of applicable wheat crop insurance policy issued by said Corporation attached, the accepted application and policy constituting the contract of insurance.

(2) Crop Insurance Acreage Report, 1956, State and county code and contract number 91-009-6-209, signed by Harold Roberts, insured, May 15, 1956.

(3) Statement of Debtor's Account, Wheat Contract 91-009-6-209, as of June 27, 1956.

In Witness Whereof, I have affixed the seal of Federal Crop Insurance Corporation and have signed my name hereto on the day and year first above written.

[Seal]      /s/ ERNEST C. NEAS,  
Assistant Secretary, Federal  
Crop Insurance Corporation.

UNITED STATES DEPARTMENT OF AGRICULTURE  
Federal Crop Insurance Corporation

APPLICATION FOR CROP INSURANCE ON Wheat

(For 195<sup>6</sup> and Succeeding Crop Years)

Mr. Harold Roberts  
Name (NAME OF APPLICANT - PRINT)  
Rt. 1 Coulee City, Wn.  
Address (ADDRESS - PRINT)

91-009-6-209  
(STATE AND COUNTY CODE AND CONTRACT NUMBER)  
Douglas Wash.  
(COUNTY) (STATE)

The undersigned applicant hereby applies to the Federal Crop Insurance Corporation (herein called the "Corporation") for crop insurance on his interest as landlord, owner-operator, tenant, or sharecropper in the above-mentioned crop (crops designated in the policy in case of multiple crop insurance) planted on acreage included in the crop insurance program for the county designated above, and for which a coverage is shown in the county actuarial table on file in the Corporation's office for the county (herein called "county office"). The insurance shall cover loss due to the unavoidable causes specified in the applicable policy issued by the Corporation and on file in the county office, the receipt of a copy of which is hereby acknowledged by the applicant. This application, when executed by a person as an individual, shall not cover interests in a crop produced by a partnership.

This application, upon acceptance by the Corporation, and the policy shall constitute the contract. The contract shall, if this application is accepted, be in effect for the crop year specified above and shall continue in effect for each succeeding crop year until cancelled or terminated in accordance with the provisions of the policy. Except as otherwise provided in the policy, the acceptance of this application by the Corporation shall cancel, beginning with the above-specified crop year, any and all existing crop insurance contracts in the county between the parties hereto covering (1) the same crop if the application is for insurance on a single crop or (2) any one or more of the crops if the application is for multiple crop insurance.

For the first crop year of the contract the coverage(s) and premium rate(s) shall be those established by the Corporation for that crop year and shown on the county actuarial table on file in the county office. For each subsequent crop year the coverage(s) and premium rate(s) shall be those shown on the county actuarial table for that crop year and shall, together with any changes in the policy, be on file in the county office at least fifteen days prior to the applicable cancellation date.

Applicable only to Multiple Crop Insurance. The applicant does  elect to combine all insurance units into one combination unit. (Unless the word "not" is entered in the space provided, it is understood and agreed that the applicant shall have a combination unit for all purposes under the contract.) (ENTER "NOT" WHERE APPLICABLE)

- NOTE FOR PREMIUM -

The applicant promises to pay to the Corporation each crop year during which the contract is in effect the amount of the premium earned under the contract for such year as soon as such premium becomes due. He agrees that any amount of the premium which is unpaid on the day following the discount date shown in the policy shall be increased by ten percent and that thereafter, at the end of each 12 months' period, six percent simple interest shall attach to any premium balance which is unpaid.

9-13 195<sup>5</sup>  
(DATE)

Harold Roberts  
(SIGNATURE OF APPLICANT)  
Brown  
(WITNESS TO APPLICANT'S SIGNATURE)

The undersigned co-signer is a surety for the payment of the premium note as it applies to the first crop year of the contract and is in no other way a party to the contract.

(NAME AND ADDRESS OF CO-SIGNER OF PREMIUM NOTE)  
(TYPE OR PRINT)

(SIGNATURE OF CO-SIGNER)

9-20 195<sup>5</sup>  
(DATE)

RECOMMENDATION FOR ACCEPTANCE

Brown  
(CORPORATION REPRESENTATIVE)

ACCEPTED BY THE FEDERAL CROP INSURANCE CORPORATION BY

John C. Harrison  
(AUTHORIZED REPRESENTATIVE)

9-13 195<sup>5</sup>  
(DATE)

COUNTY OFFICE ADDRESS

LOCATION OF FARM(S) OR HEADQUARTERS

BRANCH OFFICE COPY





year of the contract, he shall submit with his acreage report of wheat seeded for harvest as grain in any wheat seeded for any purpose other than harvest as grain. Upon approval of the Corporation, the acreage used in computing the premium and total coverage shall not include acreage so designated. However, any wheat threshed from such acreage shall be considered as wheat produced on the insured acreage in determining any loss under the contract. The contract shall not provide insurance for volunteer wheat, wheat seeded with flax or other small grains, vetch, Austrian winter peas, dry edible peas, or a type of wheat which the Corporation determines is not adapted to the area. However, in determining production, volunteer small grains, volunteer vetch, volunteer Austrian winter peas and volunteer dry edible peas growing with the seeded wheat crop, and small grains seeded in the growing wheat crop on acreage not released by the Corporation, shall be counted as grain.

**2. Insurable acreage.** For each crop year of the contract, any acreage is insurable only if a coverage is shown therefor on the county actuarial table on the applicable calendar closing date for filing applications for that crop year, provided the farming practice followed on such acreage is one for which a coverage was established.





# WHEAT CROP INSURANCE

IN CONSIDERATION of the representations and provisions in the application upon which this policy is issued, which application is made a part of the contract, and subject to the terms and conditions set forth or referred to herein, the Federal Crop Insurance Corporation (hereinafter designated as the Corporation) does hereby insure

*This policy is a duplicate of the one referred to in your application for insurance. The spaces provided for entries and signature on this page need not be filled in as insurance becomes effective upon the acceptance of your application by the Corporation.*

Policy number .....

54

County .....

State .....

*Leffler*  
Manager

(Hereinafter designated as the insured)

against unavoidable loss on his wheat crop due to drought, flood, hail, wind, frost, winter-kill, lightning, fire, excessive rain, snow, wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board of Directors of the Corporation. (For irrigated acreage, also see section 31.)

In witness whereof, the Federal Crop Insurance Corporation has caused this policy to be issued



FEDERAL CROP INSURANCE CORPORATION

By .....

State Crop Insurance Director.

## TERMS AND CONDITIONS

- 1. Kinds of wheat insured.** The wheat to be insured shall be winter and spring wheat seeded for harvest as grain. If the insured seeds only a part of his wheat for harvest as grain in any year of the contract, he shall submit with his acreage report of wheat seeded a designation of any acreage of wheat seeded for any purpose other than harvest as grain. Upon approval of the Corporation, the acreage used in computing the premium and total coverage shall not include acreage so designated. However, any wheat threshed from such acreage shall be considered as wheat produced on the insured acreage in determining any loss under the contract. The contract shall not provide insurance for volunteer wheat, wheat seeded with flax or other small grains, vetch, Austrian winter peas, dry edible peas, or a type of wheat which the Corporation determines is not adapted to the area. However, in determining production, volunteer small grains, volunteer vetch, volunteer Austrian winter peas and volunteer dry edible peas growing with the seeded wheat crop, and small grains seeded in the growing wheat crop on acreage not released by the Corporation, shall be counted as wheat.
- 2. Insurable acreage.** For each crop year of the contract, any acreage is insurable only if a coverage is shown therefor on the county actuarial table on the applicable calendar closing date for filing applications for that crop year, provided the farming practice followed on such acreage is one for which a coverage was established.





3. Responsibility of insured to report. (a) If, after seeding or planting, the insured shall submit to the Corporation, on a form approved by the Corporation, a report over his signature, of all acreage in the county seeded to wheat in which he has an interest at the time of seeding. This report shall show the acreage seeded to wheat in each insurance unit and his interest in each unit at the time of seeding. If the insured does not have a pecuniary interest in wheat seeded in any year, a written report shall nevertheless be submitted promptly after the seeding of wheat is generally completed in the county. Any acreage report submitted by the insured shall be considered final and not subject to change by the insured. (b) If the insured fails to file an acreage report within 30 days after seeding of the applicable type of wheat (winter or spring) is generally completed in the county as determined by the Corporation, the Corporation may elect to determine that the insured acreage of that type of wheat is "zero." (c) Failure of the Corporation to request submission of such report or to send a personal representative to obtain the report shall not relieve the insured of the responsibility to make such report.

4. Insured acreage. The insured acreage with respect to each insurance unit shall be the acreage of wheat seeded for harvest as grain as determined by the insured or as determined by the Corporation, whichever the Corporation shall elect, except that insurance shall not attach with respect to (a) any acreage seeded to wheat which is destroyed (as defined in section 15) and on which it is practical to reseed to wheat, as determined by the Corporation, and such acreage is not reseeded to wheat; (b) any acreage initially seeded to wheat too late to expect a normal crop to be produced, as determined by the Corporation; (c) new ground acreage where the cancellation date is April 30, and (d) any acreage seeded for harvest in a crop year for which cancellation of the contract becomes effective. (For irrigated acreage, also see section 31.) The Corporation reserves the right to limit the insured acreage on any farm to the wheat allotment or permitted acreage established under any act of Congress including the Agricultural Adjustment Act of 1938, as amended.

5. Insured interest. The insured interest in the wheat crop covered by the contract shall be the interest of the insured at the time of seeding as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect. For the purpose of determining the amount of loss the insured interest shall not exceed the insured's interest at the time of loss or the beginning of harvest, whichever occurs first.

6. Coverage per acre. The coverage per acre established for wheat is located shall be shown by practice(s) on the county actuarial table on file in the county office. The coverage per acre is progressive depending upon whether the acreage is (a) First Stage—released and seeded to a substitute crop, (b) Second Stage—not harvested and not seeded to a substitute crop, or (c) Third Stage—harvested.

7. Fixed price. The fixed price per bushel for the first crop year of the contract shall be the price established for that year by the Corporation and shall be shown on the application for insurance is submitted. For each subsequent crop year the fixed price shall be on file in the county office at least 15 days prior to the applicable cancellation date preceding the crop year for which such price applies. The fixed price shall be used to determine the cash equivalent of premiums and of any indemnities.

8. Insurance period. Insurance with respect to any insured is seeded. Insurance shall attach at the time the wheat is seeded. Insurance shall cease with respect to any portion of the wheat crop covered by the contract upon threshing (in California, 120 hours thereafter, when combined and in sacks in the field) or removal from the field, whichever occurs first, but in no event shall the insurance remain in effect later than October 31 of each year, unless such time is extended in writing by the Corporation.

9. Life of contract, cancellation or termination thereof. (a) Subject to the provisions of this section, the contract shall be in effect for the first crop year specified on the application and shall continue in effect for each succeeding crop year until canceled by either the insured or the Corporation. Cancellation may be effected by either party by giving written notice to the other party before the applicable cancellation date preceding the seeding of the crop for which the cancellation is to become effective, provided, however, if any amount due to the Corporation remains unpaid on such cancellation date, the time during which the Corporation may cancel shall be extended to the following closing date. The insured shall give such notice to the county or another office of the Corporation. The Corporation shall mail notice of cancellation to the insured's last known address and the mailing of such notice shall constitute notice to the insured. (b) If the insured cancels the contract, he shall not be eligible for crop insurance on wheat seeded or to be seeded in the county for harvest in the next calendar year unless subsequent to such cancellation he files an application for insurance on or before the cancellation date preceding such year. (c) Not applicable. (d) If the minimum participation requirement as established by the Corporation is not met for any year the contract shall continue in force only to the end of the crop year for which such requirement is not met, except that if the minimum participation requirement is met on or before the next succeeding applicable closing date the contract shall continue to be in force. (e) The contract shall terminate upon death or judicial declaration of incompetency of the insured except after the beginning or ending of the wheat crop in any crop year but before the end of the insurance period for such year, the contract shall (1) cover any additional wheat seeded for the insured or his estate for that crop year, and (2) terminate at the end of such insurance period.

10. Changes in contract. The Corporation reserves the right to change the minimum rates(s), insurance coverage(s), and other terms and provisions of the contract from year to year. Notice of such changes shall be mailed to the insured at least 15 days prior to the applicable cancellation date preceding the crop year for which such changes are to become effective. Failure of the insured to cancel the contract as provided in section 9 shall constitute his acceptance of any such changes. If no notice is mailed to the insured the terms and provisions of the contract for the prior year shall continue in force.

11. Causes of loss not insured against. (a) Failure to follow recognized good farming practices; (b) poor farming practices, including but not limited to the use of defective or unadapted seed, failure to plant a sufficient quantity of seed, failure properly to prepare the land for seeding or

property to seed, care to harvest and thresh the insured crop (including another crop ~~with~~ <sup>or</sup> the wheat or in the growing season); (d) seeding another crop ~~with~~ <sup>or</sup> the wheat or in the growing season; (e) seeding excessive acreage under abnormal conditions; (f) seeding wheat under conditions of immediate hazard; (g) inability to obtain under seed, fertilizer, machinery, repair, or poison; (h) breakdown of machinery, or failure of equipment due to mechanical defects; (i) neglect or malfeasance of the insured; (j) any person in his household or employment or connected with the farm as tenant or wage hand; (k) domestic animals or poultry; or (l) theft. (For irrigated acreage, also see section 31.)

12. Amount of annual premium. (a) The premium rate per acre for the coverage and rate area in which the insured acreage is located and will be shown by practice(s) on the county actuarial table on file in the county office. The annual premium for each insurance unit under the contract will be based upon (1) the insured acreage of wheat, (2) the applicable premium rate(s), and (3) the insured interest in the crop at the time of seeding. There will be a reduction in the annual premium for each insurance unit of one percent in cases where the insured acreage on the insurance unit is as much as 25 percent of the total for each additional 50 acres or fractional thereof on the insurance unit. However, the total reduction shall not exceed 20 percent. The annual premium for the insured for all insurance units covered by the contract. The annual premium with respect to any insured acreage shall be regarded as earned when the wheat crop on such acreage is seeded. (b) The insured's annual premium for any year may be reduced 25 percent if he has had seven consecutively insured wheat crops (immediately preceding the current crop year) without a loss for which an indemnity was paid. (See section 30 for definition of "consecutively insured crops.") Whether or not the insured is eligible for the above premium reduction, his annual premium may be reduced in lieu of the above in any year by not to exceed 50 percent if it is determined by the Corporation that the accumulated balance (expressed in bushels) of premiums over indemnities on consecutively insured wheat crops exceeds his total coverage (computed on a harvested acreage basis). Nothing in this paragraph (b) shall create in the insured any right to a reduced premium. (c) A discount of 5 percent shall be allowed on any earned annual premium if such is paid in full on or before the applicable cancellation date shown in section 32, if the insured has submitted to the Corporation, at the county office his winter wheat acreage report on or before December 31 of the crop year and his spring wheat acreage report on or before June 30 of the crop year, except that for California the acreage report for all wheat shall be submitted on or before March 31 of the crop year. (d) Any premium note not paid at maturity shall be treated as compounded not on a per annum basis but as follows: Three percent for the principal amount not paid on or before October 31 following the maturity date, and an additional 1 percent on the principal amount unpaid at the end of each two calendar-month period thereafter.

13. Manner of payment of premium. (a) Payment on any made by means of cash or by check, money order, postal note, or bank draft payable to the order of the Treasurer of the United States. All checks and drafts will be accepted subject to collection and payment tendered shall not be regarded as paid unless collection is made. (b) Any unpaid amount of any annual premium plus any interest due may be deducted (either before or after the date of maturity) from any indemnity payable by the Corporation, from the proceeds of any commodity loan to the insured, and from any payment made to the insured under the Soil Conservation and Domestic Allotment Act, as amended, or any other act of Congress or program administered by the United States Department of Agriculture. There shall be no refund of any annual premium overpayment of less than \$1.00 unless written request for such refund is received by the Corporation within 1 year after the payment thereof.

14. Notice of loss or damage. (a) If any damage occurs to the insured crop during the growing season and a loss under the contract is probable, notice in writing (unless otherwise provided by the Corporation) shall be given the Corporation at the county office promptly after such damage. (b) If a loss under the contract is sustained, notice in writing (unless otherwise provided by the Corporation) shall be given the Corporation at the county office within 15 days after threshing is completed or by October 31, whichever is earlier. (c) The Corporation reserves the right to reject any claim for indemnity if either of the notices required by this section is not given.

15. Released acreage. Any acreage of the insured wheat crop reseeded to wheat may be released by the Corporation to be put to another use. Any acreage shall be considered destroyed if it is damaged to the extent that farmers generally in the area where the land is located would not further care for the crop or harvest any portion thereof. (For production to be counted, see section 15.) No insured acreage may be planted to a substitute crop or put to another use until the Corporation releases such acreage. Proper measures shall be taken to protect the crop from further damage on any insured acreage if the crop has been damaged but the acreage has not been released by the Corporation. The release of such acreage is not to amount to a use, or is resseeded to what be disregarded by the Corporation. There shall be no abandonment of any crop or portion thereof to the Corporation.

16. Time of loss. Any loss shall be deemed to have occurred at the end of the insurance period, unless the entire wheat crop on the insurance unit was destroyed earlier, in which case the loss shall be deemed to have occurred on the date of such damage as determined by the Corporation.

17. Proof of loss. If a loss is claimed, the insured shall submit to the Corporation, on a Corporation form entitled "Statement in Proof of Loss," such information regarding the manner and extent of the loss as may be required by the Corporation. The statement of loss shall be submitted to the County Office at the time of loss, unless the time for submitting the data is extended in writing by the Corporation. It shall be a condition precedent to any liability under the contract that the insured establish the production of wheat on the insurance unit, the amount of any loss for which claim is made, and that such loss has been directly caused by one or more of the hazards insured against by the contract during the insurance period for the crop year for which the loss is claimed, and that the insured further establish that the loss has not arisen from or been caused by either directly or indirectly, any of the causes of loss not insured against by the contract. If a loss is claimed, any wheat acreage which is not to be harvested shall be left intact until the Corporation makes an inspection.







irrigated acreage. (a) In addition to the provisions of section 4, where insurance is written on the basis of irrigated coverage the following provisions shall apply: (1) In counties where part of the wheat is normally irrigated and a part is normally irrigated the acreage of wheat which shall be insured on the basis of irrigated coverage in any year shall not exceed the smaller of (i) that acreage which could be irrigated adequately with the facilities available, taking into consideration the amount of water required to irrigate the acreage of all irrigated crops on the farm, or (ii) that acreage on which one irrigation is carried out in accordance with good farming practices determined by the Corporation, either before the crop is seeded or during the growing season. Any insurable acreage of wheat on which the above irrigation requirements are not met will be insured on the basis of non-irrigated coverage. (2) Insurance shall not attach with respect to acreage seeded to wheat the first year after the ground is leveled. (b) In addition to the causes of loss insured against shown on the first page of this policy the contract shall cover loss in production due to failure of the water supply from natural causes that could not be foreseen and prevented by the insured, including (1) subsidence of the water level in pump wells adequate at the beginning of the growing season to the extent that further deepening the well or drilling a new well would be necessary to obtain an adequate supply of water, (2) failure of public power used for pumping or failure of irrigation district or water company to deliver water where such failure is not within the control of the insured, and (3) the collapse of casing in wells. (c) In addition to the causes of loss not insured against shown in section 11, the contract shall not cover loss in production caused by (1) failure properly to apply adequate irrigation water to wheat when needed and in accordance with recognized good farming practices for the area, (2) failure to provide adequate casing or properly adjust the pumping equipment in the event of a lowering of the water level in pump wells when such adjustment can be made without deepening the well, (3) failure properly to apply irrigation water to wheat in proportion to the need of the crop and the amount of water available for all irrigated crops, and (4) shortage of irrigation water on any farm where the Corporation determines that the total acreage of all irrigated crops on the farm is in excess of that which could be irrigated properly with the facilities available and with the supply of irrigation water which could be reasonably expected.

32. Date table. For each year of the contract the cancellation date, discount date, and maturity date are as follows:

State and County	Cancellation Date <sup>1</sup>	Discount Date	Maturity Date
California	June 30	Mar. 31	June 30
Colorado	Apr. 30	Feb. 28	June 30
Idaho	June 30	June 30	July 31
Illinois	June 30	Feb. 28	June 30
Indiana	June 30	Feb. 28	June 30
Kansas	Apr. 30	Feb. 28	June 15
Maryland	June 30	Feb. 28	June 30
Michigan	June 30	Feb. 28	June 30
Minnesota	Dec. 31	June 30	July 31
Missouri	June 30	Feb. 28	June 30
Montana:			
Blaine	June 30	June 30	July 31
Cascade	June 30	June 30	July 31
Chouteau	June 30	June 30	July 31
Fergus	June 30	June 30	July 31
Hill	June 30	June 30	July 31
Judith Basin	June 30	June 30	July 31
Liberty	June 30	June 30	July 31
Petroleum	June 30	June 30	July 31
Pondera	June 30	June 30	July 31
Teton	June 30	June 30	July 31
All others	Dec. 31	June 30	July 31
Nebraska	Apr. 30	Feb. 28	June 30
New Mexico	Apr. 30	Feb. 28	June 30
New York	June 30	Feb. 28	June 30
North Dakota	Dec. 31	June 30	July 31
Ohio	June 30	Feb. 28	June 30
Oklahoma	Apr. 30	Feb. 28	June 15
Oregon	June 30	June 30	July 31
Pennsylvania	June 30	Feb. 28	June 30
South Dakota:			
Jones	Apr. 30	June 30	July 31
Lyman	Apr. 30	June 30	July 31
Meade	Apr. 30	June 30	July 31
Mellette	Apr. 30	June 30	July 31
Tripp	Apr. 30	June 30	July 31
All others	Dec. 31	June 30	July 31
Texas	Apr. 30	Feb. 28	June 15
Utah	June 30	June 30	July 31
Washington	June 30	June 30	July 31
Wyoming	Apr. 30	Feb. 28	June 30

<sup>1</sup> The cancellation date for any year is the applicable date preceding the calendar year in which the wheat is to be harvested.

THE FEDERAL CROP INSURANCE CORPORATION



UNITED STATES DEPARTMENT OF AGRICULTURE

# Wheat Crop Insurance Policy

CONTINUOUS CONTRACT



UNITED STATES DEPARTMENT OF AGRICULTURE  
FEDERAL CROP INSURANCE CORPORATION

CROP INSURANCE ACREAGE REPORT

Form Approved  
71-009 - 6-209  
(Use on county code and contract number)

County: Chase  
Name of Insured or Applicant: Thasht Chop  
(Address of Insured or Applicant): Thasht Chop  
(Address of Insured or Applicant): Thasht Chop

County: Douglas  
(Name of County)

TO FEDERAL CROP INSURANCE CORPORATION:  
I submit the following information in connection with my above-identified crop insurance contract, or application for insurance, for the crop year indicated above. This is a report of planted acres.

INFORMATION TO BE ENTERED BY INSURED OR APPLICANT				INFORMATION TO BE ENTERED IN OFFICE				
Name and Location of the Legal Subdivision of the Farm (1)	Name of Other Person(s) Sharing in Crop or Farm (2)	Province, Territory, or Country (3)	Acres of Insured Crop (4)	Insured Share (5)	Area No. (6)	Premium Per Acre (7)	Gross Production (Cals. Baled) (8)	Net Loss No. (9)
<u>SP-17-21-26</u>		<u>ST</u>	<u>10.0</u>	<u>all</u>	<u>2</u>	<u>1.13</u>	<u>-</u>	<u>1</u>
<u>SP-1-21-26</u>		<u>ST</u>	<u>151.0</u>	<u>all</u>	<u>3</u>	<u>.91</u>	<u>-</u>	<u>1</u>
<u>SP-16-21-26</u>	<u>Hypothek Land Company</u>	<u>ST</u>	<u>155.0</u>	<u>3/4</u>	<u>3</u>	<u>.94</u>	<u>-</u>	<u>2</u>

Total Unit #1 - 191.0 acres

CERTIFICATION

I certify that the information in the heading and in columns 1 through 6 above is correct and complete and represents my entire interest of insured in the insured crop in the county and that of all shareholders and share tenants who share with me in the crop and whose interests are insured under my contract. If this is a report of insured acreage if it understood and I agree that unless I file a planted acreage report within 15 days after this insured crop is planted, this report will be my acreage report.

Thasht Chop (Signature of Insured) May 15, 1956 (Date)

I certify that on the basis of my knowledge and belief the data on this report are correct and complete and that this form has been prepared in accordance with existing procedure.

Thasht Chop (Signature of Corporation Representative) May 15, 1956 (Date)

A. Total Premium 1

B. Premium Subsidies 1

C. Reduced Premium (A-B) 1

D. Account Premium Balance 1

E. Maximum Coverage 1

F. F. Tr. No. 1

SEARCH OFFICE COPY





United States Department of Agriculture  
Federal Crop Insurance Corporation

STATEMENT OF DEBTOR'S ACCOUNT

Harold Roberts	Wheat Contract 91-009-6-209			
Date	Particulars	Debit	Credit	Balance
1956	Discounted Wheat Premium .....	\$299.24		\$299.24

On November 30, 1956, 10% increase will be attached to any amount of the discounted premium left unpaid, and at the end of each 12 months period thereafter six per cent simple interest will attach to any amount of the premium remaining unpaid.

I hereby certify that the foregoing is a true and correct copy of the account maintained by the Federal Crop Insurance Corporation for the above-named insured who is, as of this date, indebted to the said Corporation for the amount as indicated by the final entry in the "Balance" column as shown above plus interest as described.

Date: June 27, 1956.

/s/ J. FRANCIS BUCK,  
Branch Manager. [23]

[Endorsed]: Filed November 21, 1956.

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[Title of District Court and Cause.]

SECOND AMENDED ANSWER AND  
COUNTER-CLAIM

Comes Now the defendant, The United States, by

its attorneys, William B. Bantz, United States Attorney for the Eastern District of Washington, and Robert L. Fraser, Assistant United States Attorney for said District, and for answer to the complaint filed herein admits, denies and alleges:

I.

Admits paragraph I of the plaintiffs' complaint with the exception that the defendant denies that it had issued policies of insurance to the parties plaintiff named as follows: Theodore B. Rice, E. G. Banscom, Frank Miller, Claude Miller, Teressa M. Davis, Geo. Jordan & Sons, Dale Leander, Clarence Adams.

II.

Admits paragraphs II, III, IV, V, VI, and VII of the plaintiffs' complaint.

III.

Denies paragraph VIII of the plaintiffs' complaint and alleges that a meeting of wheat producers in St. Andrews, Washington, on [26] April 9, 1956, Creighton Lawson, Washington State Director for defendant, informed those present that if claims for loss of 1956 wheat production were made at that time, such claims, in his opinion, would be rejected, and that he was authorized to speak for the Corporation; and said statement was in accord with provisions of the act and the wheat crop insurance contracts.

IV.

Denies paragraph IX except that defendant is without knowledge or information sufficient to form

a belief as to the truth of the averment that the cost of reseeding wheat was \$6.50 per acre; and alleges further that parties plaintiff have reseeded an aggregate of 16,003.1 acres according to their own certified wheat crop insurance acreage reports filed by them with the defendant pursuant to Section 3 of their policies of insurance.

Denies paragraph X of the plaintiffs' complaint by reason of the fact that the defendant does not understand what this paragraph means; but alleges that the defendant, under the terms of the contracts could not have and has not repudiated any 1956 wheat crop insurance contracts with any of the parties plaintiff, all of which contracts are still in full force and effect, a fact that they recognized by filing acreage reports reporting their reseeded acreage. Further, all plaintiffs other than those enumerated in paragraph I of the defendant's Counter Claim set forth herein below have paid the 1956 premium to the Federal Crop Insurance Corporation by way of further recognizing that said contracts are still in full force and effect.

For Further Answer and Counter-Claim the defendant sets forth the following facts:

### I.

The defendant alleges that plaintiff, J. E. Thoren, Contract No. 91-009-0-107, is presently indebted to the defendant for [27] the 1956 insurance premium in the sum of \$154.07, which includes the 10% increase as explained in this paragraph below. Further, that plaintiff, George A. Murison, Contract No.

9-009-6-310 (after setoffs) is indebted to the defendant for the 1956 insurance premium in the amount of \$263.67, which includes the 10% increase as set out in this paragraph below.

Said premiums are calculated in accordance with paragraph 12 of the policy and are earned when the acreage is seeded, although demands for payment are not made at that time. The premium note (Applicant No. E.) provides that if the premium is not paid by the discount date shown in the policy, which for Washington is June 30, the premium shall be increased by 10% and the unpaid premium or any balance thereof shall be subject to interest at 6% at the end of each 12-month period.

Wherefore, the defendant prays for judgment against plaintiff, J. E. Thoren, for the insurance premium for 1956 in the sum of \$154.07, plus 6% interest until paid and against plaintiff, George A. Murison, for the insurance premium for 1956 in the sum of \$263.67, plus 6% interest until paid. This defendant further prays for dismissal of the suit of the plaintiffs with prejudice, with costs to the defendant, and for such other and further relief as the court may deem just and equitable.

/s/ WILLIAM B. BANTZ,  
United States Attorney,

/s/ ROBERT L. FRASER,  
Assistant Attorney. [28]

Certificate of Service by Mail Attached. [29]

[Endorsed]: Filed March 20, 1957.

[Title of District Court and Cause.]

REPLY TO SECOND AMENDED ANSWER  
AND COUNTER-CLAIM

Comes now the plaintiffs and in reply to the Second Amended Answer and Counter-Claim, admits, denies and alleges as follows:

I.

Plaintiffs deny each and every allegation in the Answer where such denial is not inconsistent with the allegations of plaintiffs' complaint.

II.

In reply to the second answer and counter-claim, plaintiffs deny each and every allegation therein contained.

Dated this 26th day of March, 1957.

KIMBALL & CLARK,  
/s/ By NED W. KIMBALL,  
Attorneys for Plaintiffs. [30]

Acknowledgment of Service Attached.

[Endorsed]: Filed March 28, 1957.

[Title of District Court and Cause.]

### AMENDED COMPLAINT

Comes now the plaintiffs by this amended complaint and for a cause of action against the defendants, complain and allege as follows:

#### I.

That the United States District Court has jurisdiction of this matter under and by virtue of Title 7, U.S.C.A., Paragraph 1508, sub-section (c), the same being the statutory statement of jurisdiction.

#### II.

That all of the above named plaintiffs are farmers farming lands in Douglas County, Washington, and all are holders of policies of crop insurance issued by defendant.

#### III.

That the defendant is a government corporation established under the Department of Agriculture and does business in Douglas County, Washington, through agents duly appointed by said Corporation.

#### IV.

That each of the above named plaintiffs seeded winter wheat in the late summer of 1955, which said winter wheat was found to be a total loss in the Spring of 1956 when the snow melted off the land.

#### V.

That the insurance policy, in the insuring clause, reads as follows:

“In consideration of the representations and provisions in the application upon which this policy is issued, which application is made a part of the contract, and subject to the terms and conditions set forth or referred to herein, the Federal Crop Insurance Corporation (hereinafter designated as the Corporation) does hereby insure \* \* \* (Hereinafter designated as the insured) against unavoidable loss on his wheat crop due to drought, flood, hail, wind, frost, winter-kill, lightning, fire, excessive rain, snow, wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board of Directors of the Corporation.”

#### VI.

That paragraph entitled “8. Insurance period” of said insurance policy reads as follows:

“Insurance with respect to any insured acreage shall attach at the time the wheat is [32] seeded \* \* \* .

#### VII.

That paragraph entitled “16. Time of Loss.” of said insurance policy reads as follows:

“Any loss shall be deemed to have occurred at the end of the insurance period, unless the entire wheat crop on the insurance unit was destroyed earlier, in which event the loss shall be deemed to have occurred on the date of such damage as determined by the Corporation.”

#### VIII.

That paragraph entitled “6. Coverage per acre.” reads as follows:

“The coverage per acre established for the area in which the insured acreage is located shall be shown by practice(s) on the county actuarial table on file in the county office. The coverage per acre is progressive depending upon whether the acreage is (a) First Stage—released and seeded to a substitute crop, (b) Second Stage—not harvested and not seeded to a substitute crop, or (c) Third Stage—harvested.”

## IX.

That on April 9, 1956, after it was determined that the seeded crop was a total loss, the plaintiffs, at a meeting at St. Andrews, Washington, received information from one Creighton Lawson, Washington State Director of the defendant Corporation, that no claims would be paid to the plaintiffs for the loss sustained to the 1956 wheat crop if plaintiffs made claims under the Sections of the policy quoted herein.

## X.

That as a result of the repudiation of the contract by the defendant, plaintiffs, in order to mitigate their damage, were forced to reseed the acreage on which the winter wheat crop had been lost at a cost of \$6.50 per acre, and that plaintiffs lost crop on and reseeded approximately 40,000 acres, more or less.

## XI.

That, depending on the yield of the 1956 crop [33] as reseeded, the above mentioned repudiation of the contract by defendant may result in further damage to the plaintiffs in an amount equal to the differ-



ence between the actual amount harvested and the insured amount of wheat and that in order to perfectly protect the plaintiffs the Court should direct that the insurance be reinstated.

Wherefore, Plaintiffs pray for damage in an amount equal to the sum determined by multiplying the number of insured acres reseeded by \$6.50 per acre plus interest; for judgment reinstating the insurance contract; for their costs and disbursements herein expended; and for such other and further relief as to the Court may seem just and equitable.

KIMBALL & CLARK,  
/s/ By NED W. KIMBALL,  
Attorneys for Plaintiffs.

Consent to file Amended Complaint without leave of Court.

/s/ ROBERT L. FRASER,  
Assistant Attorney.

Duly Verified.

[Endorsed]: Filed September 23, 1957. [34]

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[Title of District Court and Cause.]

MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Comes Now the defendant, represented by William B. Bantz, United States Attorney for the Eastern District of Washington, and Robert L. Fraser, Assistant United States Attorney, and moves the Court as follows:

## I.

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the above entitled action because said cause of action fails to state a claim against defendant upon which relief may be granted;

## II.

Or in the alternative, pursuant to Federal Rules of Civil Procedure, Rule 56(b), to enter summary judgment for this defendant on the grounds that there are no issues of any material fact in said cause of action and that the defendant is entitled to a judgment as a matter of law as appears from the amended complaint on file herein, the affidavit and exhibits attached to this motion, incorporated within it, and made a part of this motion, and all the files and records of the above entitled case.

/s/ WILLIAM B. BANTZ,  
 United States Attorney,  
 /s/ ROBERT L. FRASER,  
 Assistant Attorney. [35]

State of Washington,  
 County of Spokane—ss.

Creighton F. Lawson, being first duly sworn on oath deposes and says:

Your affiant states that he is the Washington State Director for the Federal Crop Insurance Corporation and that your affiant's duties in the main consist of administration of crop insurance matters in Oregon, Washington, Idaho and Utah; super-

vision of salesmen, loss adjusters, agents and state office personnel.

Your affiant further states that the Federal Crop Insurance Corporation is a United States Government agency set up by an act of Congress, which is reflected in Title 7 of the United States Code and also the Federal Register.

Your affiant states that he was furnished a copy of the amended complaint filed on September 23, 1957 in cause No. 1435, Harold Roberts, et al. v. The Federal Crop Insurance Corporation, a Government corporation, and personally examined the records reflecting contracts of insurance with reference to each of the plaintiffs listed.

Your affiant states that all plaintiffs listed in the amended complaint referred to have contracts of insurance with the Federal Crop Insurance Corporation, a government agency, with the exception that your affiant could not locate any contract for Theodore B. Rice, individually, or E. G. Branscom, individually, although your affiant discovered that Rice Brothers, by T. B. Rice had a contract of insurance and Branscom & Sons, by A. B. Branscom had a contract of insurance.

Your affiant states that all contracts of insurance were in full force and effect during the time the damage was alleged to have occurred as set out in plaintiff's complaint.

Your affiant further states that each of the individual plaintiffs having contracts of insurance was

furnished with a copy of the wheat [36] crop insurance policy, a copy of which is attached to this affidavit as Exhibit A, and constitutes the contractual agreement between the Federal Crop Insurance Corporation, a government agency, and the individual plaintiffs.

Paragraph 17 of Exhibit A, among other things, states:

“If a loss is claimed, the insured shall submit to the Corporation, on a Corporation form entitled ‘Statement in Proof of Loss’, such information regarding the manner and extent of the loss as may be required by the Corporation. The statement in proof of loss shall be submitted not later than 60 days after the time of loss. \* \* \* It shall be a condition precedent to any liability under the contract that the insured establish the production of wheat on the insurance unit, the amount of any loss for which claim is made \* \* \* ”

The proof of loss form referred to in paragraph 17 of Exhibit A is attached to this affidavit as Exhibit B.

Your affiant states that in the regular course of business in April of 1956 that Ralph McLean on April 2, 1956 and Lloyd McLean on April 13, 1956 gave notice of probable loss to the corporation to winter wheat, which was covered under the insurance contract, said loss occurring from winter kill.

Your affiant states further that an adjuster was sent to the farms of Ralph McLean and Lloyd Mc-

Lean, wherein it was the adjuster's opinion, and also your affiant's, that it was practical to reseed due to the early date and to good moisture in the ground. In relation to denying or approving payments on claims of loss, your affiant states that he is absolutely without any authority to either deny a claim or to approve a claim but that he does have authority to recommend approval or denial of claims to the manager of the Chicago Branch of the Federal Crop Insurance Corporation, who has the authority to deny or approve claims. Your affiant further states that in all cases where a notice of loss and proof of loss is furnished to your affiant as the Washington State Director of the Federal Crop Insurance Corporation that it is incumbent and necessary that the claim and proof of loss be forwarded to [37] the manager of the Chicago Branch for either approval or denial.

Your affiant was advised by the Douglas County crop insurance adjusters that some of the insureds had requested the State Director to be present at a meeting at St. Andrews, Douglas County, Washington on April 9, 1956. At that time your affiant answered questions asked by individuals who were present at said meeting. At the meeting your affiant advised all present that your affiant did not have final authority to either deny or approve a claim but that in your affiant's opinion, that if at this time the policy holders of Federal Crop Insurance Corporation contracts in Douglas County would make a claim under the policies to be paid for damage

done by winter kill to the 1956 winter wheat crop, the claims would be rejected. Your affiant does not know the identity of the individuals present at that meeting, other than Mr. Curt Clark, attorney at law, and certain of the adjusters.

Your affiant, at the request of Mr. Curt Clark, signed a handwritten sheet of paper setting out the above. The copy of the instrument signed by your affiant is attached to this affidavit as Exhibit C. At that meeting your affiant also advised those present that in your affiant's opinion it was customary and practical to reseed in Douglas County, and that under Paragraph 4 of the contract of insurance, referred to as Exhibit A, that if it was practical to reseed, the insurance contract would not attach unless the acreage was reseeded, and further that your affiant's recommendation to the Federal Crop Insurance Corporation would be that it was in this case practical to reseed. Your affiant's opinion as expressed was based upon paragraph 4 of the policy as set out as Exhibit A.

Your affiant received a letter dated May 9, 1956 from Mr. Ned W. Kimball reflecting that certain of the named plaintiffs had suffered a loss through winter kill. A copy of said letter is attached as Exhibit D. Your affiant has personally examined all files and records and no other individual other than those listed [38] in Exhibit D has furnished any type of notice of loss to the Federal Crop Insurance Corporation as is required in paragraph 14 of Exhibit A.

Your affiant further states that he has personally examined all files and records and that no individual either named in Exhibit D or listed as plaintiff in the amended complaint has furnished proof of loss to the Federal Crop Insurance Corporation as required in Section 17 of the contract of insurance, Exhibit A.

Your affiant further states that Exhibit A was printed in the Federal Register of September 21, 1951, Section 418.160, and is the same with relation to paragraph 4, 14 and paragraph 17 referred to in this affidavit. Your affiant states further that after examination of the individual records of each plaintiff that it discloses that no denial of the claims was ever made in that the proof of loss was never submitted to the corporation affording it the opportunity to either deny or approve.

/s/ CREIGHTON F. LAWSON.

Subscribed and Sworn to before me this 4th day of December, 1957.

[Seal] /s/ STANLEY D. TAYLOR,  
Notary Public in and for the State of Washington,  
residing at Spokane. [39]

[Note: Exhibit A is the same as set out at pages 9-17 except for the note, the word "Sample" on page 1 and the following]:

## Exhibit "A"—(Continued)

## Points For the Insured To Remember

These points are only reminders. Read your contract carefully.

## Caring For Your Crop

You are expected to follow good farming practices in seeding, caring for, and harvesting your wheat crop.

## Reporting Acreage

Promptly after seeding your wheat you are required to submit an acreage report to the county office.

## Reporting Damage Before Threshing

Report promptly to the county office any material damage to your wheat crop.

## Reporting Loss After Threshing

If the total production of wheat on any insurance unit is less than the coverage for the insurance unit, report this fact to the county office immediately after completion of threshing or by October 31 if threshing is not completed by that date.

## Paying Your Premium

Your premium note is due on the maturity date shown in the Date Table of this policy. Advance payment in accordance with the terms of your contract will entitle you to a 5-percent discount. If you do not take advantage of the discount, prompt payment at maturity will avoid interest charges.

## Commingling Production

If you anticipate a loss, do not mix production



## Exhibit "A"—(Continued)

from insurance units without keeping records which will accurately show the production from each.

## Length of Contract

This contract remains in effect from year to year until canceled by either party.

## Transfer of Growing Crop

All or any part of your interest in an insured wheat crop may be transferred to another person, but he will have no protection under the contract unless he immediately makes suitable arrangements with the Corporation for the payment of any premium. However, such arrangements will not relieve you of responsibility for the total premium.

## Death of Insured

The successor-in-interest should contact the county office promptly.

If seeding has begun at the time of death, the contract of the deceased will continue in force but only for that crop year. If seeding has not begun at the time of death, the contract of the deceased terminates and will not cover the crop to be seeded. The successor-in-interest should promptly contact the county office relative to obtaining insurance protection.

## Exhibit "A"—(Continued)

Attach This Rider To Your Crop  
Insurance Policy

## WHEAT CROP INSURANCE RIDER

To All Wheat Crop Insurance Policies

(Effective beginning with the 1955 Crop Year)

1. Section 2 is changed to read as follows:

2. Insurable acreage. For each crop year of the contract any acreage is insurable only if a coverage for such acreage is shown on the county actuarial table for that crop year, provided, however, in any county where a coverage(s) is established by a farming practice(s) any acreage is insurable only if a coverage is established for the farming practice followed on such acreage.

2. Section 6 is changed to read as follows:

6. Coverage per acre. The coverage per acre established for the area in which the insured acreage is located shall be shown, by practice(s) where applicable, on the county actuarial table on file in the county office. The coverage per acre is progressive depending upon whether the acreage is (a) First Stage—released and seeded to a substitute crop, (b) Second Stage—not harvested and not seeded to a substitute crop or (c) Third Stage—harvested.

3. Subsections (a) and (d) of section 9 are changed to read as follows:

## Exhibit "A"—(Continued)

9(a) Subject to the provisions of this section, the contract shall be in effect for the first crop year specified on the application and shall continue in effect for each succeeding crop year until canceled by either the insured or the Corporation. Cancellation may be made by either party giving written notice to the other party on or before the applicable cancellation date preceding the crop year for which the cancellation is to become effective: Provided, however, That (1) if by the March 31 following such cancellation date for all counties with a December 31 cancellation date any amount of premium remains unpaid or (2) if by such cancellation date for all other counties any amount of premium, except the premium due on the crop harvested or to be harvested in the calendar year in which the cancellation date occurs, remains unpaid, the contract shall terminate as if canceled by the Corporation prior to such cancellation date. Any notice of cancellation by the insured shall be in writing and shall be filed with the county office. The Corporation shall mail any notice of cancellation to the insured's last known address and mailing shall constitute notice to the insured.

9(d) If the Corporation determines that the county minimum participation requirement established by the Federal Crop Insurance Act, as amended, is not met for any crop year, insurance shall not be in effect for that crop year and the contract shall terminate.

## Exhibit "A"—(Continued)

4. Section 12 is changed to read as follows:

12. Amount of annual premium. (a) The premium rate per acre will be established by the Corporation for the coverage and rate area in which the insured acreage is located and will be shown, by practice(s) where applicable, on the county actuarial table on file in the county office. The annual premium for each insurance unit under the contract will be based upon (1) the insured acreage of wheat, (2) the applicable premium rate(s) and (3) the insured interest(s) in the crop at the time of seeding. There will be a reduction in the annual premium for each insurance unit of 4 percent for the first full 200 acres of insured acreage on the unit and an additional 2 percent reduction for each additional full 100 acres, provided, however, that the total reduction shall not exceed 20 percent. The annual premium for the contract shall be the total of the premiums computed for the insured for all insurance units covered by the contract, and with respect to any insured acreage shall be earned and payable when the wheat on such acreage is seeded.

(b) The premium rate(s) shown on the county actuarial table is based on prompt payment and any amount of the premium which remains unpaid on the day following the discount date (the discount date shall be the November 30 following the time the wheat crop is normally harvested) will be increased by 10 percent, which increased amount shall be the premium balance. Thereafter, at the end of each 12 months' period, 6 percent simple

## Exhibit "A"—(Continued)

interest shall attach to any amount of the premium balance remaining unpaid. Interest shall not be charged on premiums earned in the 1955 and succeeding crop years except as specified in this section.

(c) The insured's annual premium for any year may be reduced 25 percent if he has had seven consecutively insured wheat crops (immediately preceding the current crop year) without a loss for which an indemnity was paid. Whether or not the insured is eligible for the above premium reduction, his annual premium may be reduced in lieu of the above in any year by not to exceed 50 percent if it is determined by the Corporation that the accumulated balance of premiums over indemnities on consecutive insured wheat crops exceeds his total coverage (computed on a harvested acreage basis). Nothing in this paragraph shall create in the insured any right to a reduced premium.

(d) Notwithstanding any other provision of the contract, if in any year a premium is earned and totals less than \$10.00 the amount shall be increased to \$10.00.

5. Subsection (b) of section 13 is changed to read as follows:

13(b) Any unpaid amount of any premium or any other amount owed the Corporation by the insured may be deducted from any indemnity payable by the Corporation or from any loan or any payment made to the insured under any act of Congress

## Exhibit "A"—(Continued)

or program administered by the United States Department of Agriculture. There shall be no refund of any annual premium overpayment of less than \$1.00 unless written request for such refund is received by the Corporation within one year after the payment thereof.

6. Section 18 is changed to read as follows:

18. Insurance unit. Losses shall be determined separately for each insurance unit except as provided in section 19(b). An insurance unit consists of (a) all the insurable acreage of wheat in the county in which the insured has 100 percent interest in the crop at the time of seeding, or (b) all the insurable acreage of wheat in the county owned by one person which is operated by the insured as a share tenant, or (c) all the insurable acreage of wheat in the county which is owned by the insured and is rented to one share tenant at the time of seeding. For any crop year of the contract, acreage shall be considered to be located in the county if a coverage is shown therefor on the county actuarial table. Land rented for cash or for a fixed commodity payment shall be considered as owned by the lessee.

7. Item 4 of the "Production Schedule" contained in section 19 is changed to read as follows:

Acreage classification: 4. Acreage from which threshed wheat as determined by the Corporation (1) does not grade No. 3 or better and does not grade No. 4 or 5 on the basis of test weight only (determined in accordance with the Official Grain

Exhibit "A"—(Continued)

Standards of the United States) because of poor quality due to insurable causes, and would not meet these requirements if properly handled, and (2) has a value per bushel which is less than the lower of the fixed price or the Commodity Credit Corporation county loan rate for No. 5 wheat on the basis of test weight.

Stage of coverage to be used: Third.

Production to be counted: The number of bushels obtained by (1) multiplying the bushels of such threshed wheat by the value per bushel as determined by the Corporation, and (2) dividing the result thus obtained by the lower of the fixed price or the Commodity Credit Corporation county loan rate for No. 5 wheat on the basis of test weight.

8. Subsection (a) of section 30 is deleted.

9. Subsection (d) of section 30 is changed to read as follows:

30(d) "County office" means the Corporation's office for the county, shown on the application for insurance or such other office as may be specified by the Corporation from time to time.

10. Section 30 is changed by adding a subsection (k) to read as follows:

30(k) "County" means the area shown on the county actuarial table which may include farms located in a local producing area(s) bordering on the county.

11. Section 32 is changed by deleting the matu-

## Exhibit "A"—(Continued)

rity dates and changing the discount date to November 30 for all counties.

12. Section 32 is changed by establishing a cancellation date of April 30, and a discount date of November 30 for Bennett County, South Dakota.

Approved: beginning with the 1955 Crop Year.

[Seal] Federal Crop Insurance Corporation.  
(Code 548)

U. S. Government Printing Office: 1954 O-287861



UNITED STATES DEPARTMENT OF AGRICULTURE  
FEDERAL CROP INSURANCE CORPORATION  
INSPECTION REPORT AND CLAIM

Constitutive Claim (Statement in Proof of Loss) Only if Method "Third"

(Insured Crop) 19 (Crop Year)

Preliminary Final

(Contract Number)

(Name of Insured)

(Insurance Unit Number)

(Address of Insured)

(Other Contracts on This Acreage)

(Date Threshing or Harvesting Completed) (Date of Notice of Damage or Loss) (Date of Inspection) (Collateral Assignment? - Yes or No)  
REPORTED ACREAGE DETERMINED ACREAGE INSURED INTEREST LEVEL OF INSURANCE CLASS OF BEANS

CLASS OF BEANS

PART I. FIELD OR TRACT INFORMATION

Table with columns: Field or Tract Identification (A), Area No. and Acres (B), Acres in Field or Tract (C), Acres Released (D), Stage of Production (E), Appraised Production per Acre (F), Acted or Intended Use (G). Includes sub-sections for Length or Diameter (H), Width (I), Depth (J), Gross Cubic Feet (K), Net Cubic Feet (L), Deductions (M), Gross Bu. or Cwt. (N), Test Weight (O), and Gross Bu. or Cwt. (P).

PART II. PRODUCTION ACTUALLY HARVESTED (Must include the names of all persons who have an interest in the crop)

Table with columns: No. Bu. or Cwt. (Q), Stored in Bins or Cribs on Farm, Stored in Sacks on Farm, and Net Bu. or Cwt. (R). Includes sub-sections for Length or Diameter (S), Width (T), Depth (U), Gross Cubic Feet (V), Net Cubic Feet (W), Deductions (X), Gross Bu. or Cwt. (Y), Test Weight (Z), and Gross Bu. or Cwt. (AA).

2. Stored in Sacks on Farm

(Net Weight per Bushel)

3. Sold or in Commercial Storage

(Street)

4. Other Production Actually Harvested (Seed, Feed, etc.)

(Street)

5. Total Production Actually Harvested

PART III. PRODUCTION SHOWN ABOVE WHICH IS ELIGIBLE FOR QUALITY ADJUSTMENT

Value Per Bu. or Cwt. \$

PART IV. CAUSES OF DAMAGE INSURED AGAINST

Table with columns: Causes, Percent, Approximate Date, Causess, Fields, Acres, and Appraised Reduction Per Acre.

PART V. ADJUSTER'S NARRATIVE

EXHIBIT 'B'

PART VII. CERTIFICATION, CLAIM, RELEASE, AND ASSIGNMENT

(a) I hereby certify that, to the best of my knowledge and belief, the foregoing data are complete, true, and correct.  
(b) I hereby make claim, in this "Inspection Report and Claim," for the amount of indemnity due me computed in accordance with the terms of the...  
(c) Upon delivery of the...  
(d) I hereby assign and transfer to the Corporation with full power of attorney, to the extent of any indemnity paid to me all my rights of recovery against any persons (and against the Corporation) for damage caused by such persons (and agree to execute all necessary papers and otherwise to do everything proper to assist the Corporation to effectuate such rights.

(Date)

(Signature of Insured)

I certify that, to the best of my knowledge and belief, the facts on reported herein are complete, true, and correct, and were determined in accordance with the applicable regulations and procedures of the Corporation.

(Date)

(Signature of Adjuster)

I recommend acceptance of the data on this "Inspection Report and Claim" for the computation of any insured loss due on this unit.

(Date)

(Signature of State Director)



EXHIBIT "C"

(Copy)

The undersigned, State Director of Federal Crop Insurance Corporation, authorized to speak for said Corporation, does hereby state that if the policy holders of Federal Crop Insurance in Douglas County make a claim under the policies to be paid for the 1956 crops at this time said claims will be rejected in his opinion.

Dated this 9th day of April, 1956.

CREIGHTON F. LAWSON. [45]

EXHIBIT "D"

(Copy)

NED W. KIMBALL

Attorney-at-Law

Waterville, Washington

May 9, 1956

Federal Crop Insurance Corporation

Douglas County Office

Waterville, Washington

Gentlemen:

Please take notice that the following farmers have sustained a loss through winter-kill. Each of the farmers named herein are holders of a Federal Crop Insurance Corporation insurance policy.

Name	Approx. Acres
Harold Roberts Coulee City, Washington	351
Ralph McLean Mold, Washington	753

## Exhibit "D"—(Continued)

Name	Approx. Acres
Robert Jessup	160
Mansfield, Washington	
Geo. A. Murison	548
Mansfield, Washington	
Andrew G. Nilles	900
Mansfield, Washington	
H. E. McDonald	204
Coulee City, Washington	
W. H. McDonald	353
Coulee City, Washington	
M. E. Scheibner	213
Coulee City, Washington	
Theodore B. Rice	573
Coulee City, Washington [46]	
Loren W. Pendell	140
Grand Coulee, Washington	
J. E. Thoren	800
Elmer City, Washington	
E. O. McLean	428
Mansfield, Washington	
E. G. Branscom	572
Mansfield, Washington	
S. A. Buckingham	378
Mansfield, Washington	
R. E. Buckingham	312
Mansfield, Washington	
Davis Bros.	990
Coulee City, Washington	
David G. Davis	430
Coulee City, Washington	

## Exhibit "D"—(Continued)

Name	Approx. Acres
T. R. Davis	160
Coulee City, Washington	
Frank Miller	205
Coulee City, Washington	
Lloyd McLean	490
Mold, Washington	
Claude Miller	365
St. Andrews, Washington	
Miller Bros.	700
St. Andrews, Washington	
E. E. Smith	880
Coulee City, Washington	
Clyde W. Miller	280
St. Andrews, Washington	
Russell H. Hunt	700
Brewster, Washington [47]	
Edwin Miller	214
Mansfield, Washington	
Clarence Davis	410
Coulee City, Washington	
Teressa M. Davis	1588
Coulee City, Washington	
Eugene Frederick	687
Coulee City, Washington	
J. W. Buob & Sons	927
Coulee City, Washington	
John A. Danielson	800
Waterville, Washington	

## Exhibit "D"—(Continued)

Name	Approx. Acres
W. J. Hawes	226
Withrow, Washington	
Geo. Jordan & Sons	500
Withrow, Washington	
Dale Leander	650
Mold, Washington	
Lucile E. Besel	89
Waterville, Washington	

Since Mr. Lawson's statement made at St. Andrews on April 9th, we realize that it would be useless to present formal claims.

Yours very truly,

KIMBALL & CLARK,

By .....

NWK:lr [48]

Certificate of Service by Mail Attached. [49]

[Endorsed]: Filed December 4, 1957.

[Title of District Court and Cause.]

AFFIDAVIT OF C. M. CLARK

State of Washington,  
County of Douglas—ss.

C. M. Clark, being first duly sworn on oath, deposes and says:

That he is the Curt Clark referred to in the affidavit of Creighton Lawson as the attorney who attended the meeting at St. Andrews April 9, 1956.

That the wheat loss claims of plaintiffs all resulted from winter kill of the 1956 wheat crop and were all first ascertained by plaintiffs on or about April 1, 1956, when the snow melted off the lands of plaintiffs. Insofar as liability of defendant is concerned the claims are all identical. That along with Mr. Lawson and the plaintiffs, your affiant attended the meeting of April 9th and that at said meeting Mr. Lawson, after an inquiry by your affiant, stated that he was authorized to speak for the Federal Crop Insurance Corporation. That, the wheat loss of plaintiffs was discussed by the plaintiffs and representatives of the Federal Crop Insurance Corporation present and that all the Federal Crop Insurance Corporation personnel agreed that plaintiffs' loss was not covered by the policy. When Mr. Lawson was asked about treatment of claims he stated that if claims were filed at that time such claims would be denied; thereupon, your affiant advised the plaintiffs that they should re-seed their lost acreage in order to mitigate their damage in view of the repudiation of the contract by Mr. Lawson. Following the advice of your affiant the plaintiffs did re-seed the lost acreage.

Exhibit E attached hereto is a rejection of the claim presented by Ralph McLean which said rejection was handed to your affiant by Ralph McLean. Exhibit F attached hereto is a rejection of the claim presented by Lloyd McLean which said rejection was [50] handed to your affiant by Lloyd McLean. Exhibit G is a carbon copy of a letter written by your affiant to Mr. Lawson. Exhibit H is his reply

thereto. Exhibit I is a letter from Mr. C. A. Fretts, manager of the Federal Crop Insurance Corporation, in which he concurred with the rejection of the claims made by Mr. Lawson.

/s/ C. M. CLARK.

Subscribed and Sworn to before me this 16th day of December, 1957.

[Seal] /s/ LOLA RINKER,  
Notary Public in and for the State of Washington,  
residing at Waterville. [51]

\* \* \* \* \*

### EXHIBIT "F"

United States Department of Agriculture  
Federal Crop Insurance Corporation  
206 Hutton Building  
Spokane 4, Washington

April 16, 1956

Mr. Lloyd McLean  
St. Andrews  
Washington

Re: Policy 91-009-6-213

Dear Mr. McLean:

This is to acknowledge your notice of loss to your fall seeded wheat crop due to winterkill.

Since farmers are reseeding to wheat and it is practical to reseed to wheat in Douglas County, it is a condition of the contract, Section 4, that any destroyed wheat acreage be reseeded, where it is practical to reseed, in order for the insurance to attach to the acreage.

We cannot at this time set a date as to when it



## Exhibit "F"—(Continued)

will be too late to reseed. We will have to be guided by what farmers in the county are doing. As long as reseeding is being done in the county, we will expect that any destroyed wheat acreage will be reseeded in order for the insurance protection to attach to the wheat acreage.

Since thinking over the discussion which took place at the meeting in St. Andrews recently, it occurred to me that it may be the general opinion that the reseeding provision applies only to winter kill. This is not the case. The reseeding provision would apply to any cause of loss where the provision is applicable.

After it has become too late to reseed to wheat, you should keep the following contract requirements in mind:

1. If there is further damage during the growing season to the extent that you think an indemnity will be due under your contract, or to the extent that you want to make other use of a part of the acreage, you should immediately report such damage in writing to your county crop insurance office. [54]

2. You should not destroy any evidence of planting nor should other use be made of the insured acreage before it is inspected by a Corporation adjuster.

3. If the total production of any insurance unit covered by the contract is less than the coverage, report this fact in writing to your county crop in-

## Exhibit "F"—(Continued)

insurance office immediately after harvest or by October 31 if harvesting is not completed by that date.

Very truly yours,

/s/ CREIGHTON F. LAWSON,  
Creighton F. Lawson,  
Washington State Director. [55]

## EXHIBIT "G"

May 10, 1956

Mr. Creighton F. Lawson  
Washington State Director of F.C.I.C.  
206 Hutton Bldg.  
Spokane, Washington

Dear Sir:

We represent several farmers in Douglas County who desired to make claims under their crop policies for damage done to the 1956 crop through winter kill. The claims were to be made under the second stage of coverage, and in reliance on paragraph 16 of the insurance policy.

Because of the statements made at the St. Andrews meeting about the claims, if made, the farmers could readily see that it would be useless to submit them.

Our clients therefore have now reseeded the acres killed by the winter and desire that your corporation pay them the cost of reseeded. This cost is estimated to be approximately \$6.00 per acre.

We feel that the paragraph of the policy which

Exhibit "G"—(Continued)

your agents were relying on when they made the statements at St. Andrews does not control the situation in view of the language of paragraph No. 8. Your agents were basing their opinion on the language of paragraph 4.

We are prepared to go into litigation over this matter but felt you might like some time to go into the dispute with your counsel.

Unless we hear that you would like to discuss these matters with us by May 22nd, we shall commence our action.

Respectfully yours,

KIMBALL & CLARK,  
/s/ By C. M. CLARK,  
C. M. Clark. [56]

\* \* \* \* \*

EXHIBIT "I"

United States Department of Agriculture  
Federal Crop Insurance Corporation  
Washington, D. C.

May 21, 1956

Kimball & Clark  
Attorneys at Law  
Coulee City, Washington  
Attention: Mr. C. M. Clark

Gentlemen:

Our Washington State Director has forwarded for our consideration your letter of May 10, 1956, in

## Exhibit 'I'—(Continued)

regard to claims which several Douglas County wheat farmers expect to litigate, and a copy of his reply dated May 14, 1956.

We believe Mr. Lawson rather adequately set forth the position of the Corporation under the re-seeding requirements of the wheat crop insurance policies in his reply to your letter. There are, however, some points which were not covered and perhaps one of vital importance in this matter which we might call to your attention. This Corporation derives its existence and powers from the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.). To carry out the purposes of this act, the Corporation is authorized and empowered to insure against unavoidable loss of designated commodities, including wheat, but there are certain specified limitations of authority including a provision in Section 1508(a) which reads in pertinent part as follows:

“Insurance provided under this subsection shall not cover losses due to the neglect or malfeasance of the producer, or to the failure of the producer to reseed to the same crop in areas and under circumstances where it is customary to so reseed, or failure of the producer to follow established good farming practices.”

The re-seeding requirement in paragraph 4(a) of the policy is founded upon the statutory limitation cited and we respectfully submit that the policy necessarily contains such a limitation. [58] It is noted by reference to your letter to Mr. Lawson

## Exhibit 'I'—(Continued)

that you are of the opinion that paragraph 4 of the policy is not controlling in view of the language of paragraph 8 of the policy. We believe it is sufficient at this time to say that this provision must be read in the light of the statute and the corresponding limitation of paragraph 4.

We note that your clients have now reseeded their acreages killed by the winter and propose to take action to recover the cost of reseeding, estimated to be approximately \$6.00 per acre. Our reaction to this is, and necessarily must be if we are to comply with the law, that this Corporation is without authority to reimburse insureds in such circumstances.

As of this time insurance is still in force and should there be an insured loss under the terms of the contract on the acreage as reseeded, the insured involved will, of course, be indemnified upon proof thereof, as required. Otherwise, there is no basis for any claim. It is regrettable that after many years of operation under the Federal Crop Insurance Act and regulations prescribed pursuant thereto, there should be encountered such county-wide misunderstanding on the reseeding requirement. We sincerely trust that it has not created such unrest among our insureds there as to cause them to become dissatisfied with a program that is so vitally important to them in times of unavoidable losses.

This, we believe, sufficiently sets forth the position which this Corporation is compelled to assume

Exhibit "I"—(Continued)  
and will defend when called upon to do so.

Very truly yours,

/s/ C. A. FRETTS,

C. A. Fretts,

Acting Manager. [59]

[Endorsed]: Filed December 18, 1957.

[Title of District Court and Cause.]

AFFIDAVIT OF LLOYD McLEAN

State of Washington,

County of Grant—ss.

Lloyd McLean, being first duly sworn, on oath, deposes and says: That he is one of the plaintiffs in the matter entitled *Harold Roberts, et al., vs. Federal Crop Insurance Corporation*; that he presented a claim for loss of the 1956 crop by winter kill; that the said claim was rejected by Creighton Lawson by letter; and that no further rejection was received by your affiant from the Chicago or any other office of the defendant; that he was present at the meeting of April 9, 1956 at St. Andrews and that he at no time heard Mr. Lawson disclaim any authority to deny claims for the corporation.

/s/ LLOYD McLEAN.

Subscribed and sworn to before me this 17th day of December, 1957.

[Seal] /s/ CURTISS M. CLARK,

Notary Public in and for the State of Washington,  
residing at Coulee City. [60]

[Endorsed]: Filed December 18, 1957.

[Title of District Court and Cause.]

OPINION

Driver, District Judge.

Defendant has moved for summary judgment. The motion is supported by affidavits, and plaintiffs have filed answering affidavits. The motion must be denied unless it clearly appears that without any factual controversy defendant is entitled to judgment as a matter of law.<sup>1</sup> For the purpose of passing upon the motion, wherever there is any difference or dispute as to the facts, I shall take the plaintiffs' version as the true and correct one.

Plaintiffs' claims are set forth in their amended complaint. Its pertinent allegations may be summarized as follows:

All of the plaintiffs are farmers who seeded wheat crops in Douglas County, Washington in the late summer of 1955. Such crops were insured against certain designated hazards, including winter-kill, by insurance policies issued by defendant. The policies each contained the following provisions:

"8. Insurance period. Insurance with respect to any insured acreage shall attach at the time the wheat is seeded \* \* \*"

"16. Time of loss. Any loss shall be deemed to have occurred at the end of the insurance period,

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<sup>1</sup> Rule 56 F.R.C.P.; and *Cox v. American Fidelity & Casualty Co., et al.* —F. 2d— (9 Cir.—No. 15,309, decided 11/14/57).

unless the entire wheat crop on the insurance unit was destroyed earlier, in which event the loss shall be deemed to have occurred on the date of such damage as determined by the Corporation.”

“6. Coverage per acre. The coverage per acre established for the area in which the insured acreage is located shall be shown by practice(s) on the county actuarial table on file in the county office. The coverage per acre is progressive depending upon whether the acreage is (a) First Stage—released and seeded to a substitute crop, (b) Second Stage—not harvested and not seeded to a substitute crop, or (c) Third Stage—harvested.”

In the Spring of 1956, when the snow melted off the land, it became apparent that plaintiffs' wheat crops were “a total loss.” Thereafter, on April 9, 1956, at a meeting at St. Andrews, Washington, the plaintiffs “received information from one Creighton Lawson, Washington State Director of the defendant Corporation, \* \* \*” that no claims would be paid for the loss if the plaintiffs made such claims under the policies. [62]

As a result “of the repudiation of the contract by the defendant, plaintiffs, in order to mitigate their damage, were forced to reseed the acreage on which the winter wheat crop had been lost at a cost of \$6.50 per acre” on approximately 40,000 acres.

The amended complaint also contains the following paragraph:

“That, depending on the yield of the 1956 crop as reseeded, the above mentioned repudiation of the



contract by defendant may result in further damage to the plaintiffs in an amount equal to the difference between the actual amount harvested and the insured amount of wheat and that in order to perfectly protect the plaintiffs the Court should direct that the insurance be reinstated.”

The plaintiffs pray for judgment for the expense of reseeded at \$6.50 per acre, for reinstatement of the insurance, and for other relief.

The paragraph XI quoted above, is identical to paragraph X of the original complaint verified on June 15, 1956, before the wheat crops could have been harvested. The amended complaint was filed September 23, 1957, more than a year after the 1956 harvest time. As will appear later herein, the defendant Corporation has consistently maintained that the insurance carried over and attached to the reseeded crops of the plaintiffs. It would seem, therefore, that there was no loss or damage to the reseeded wheat covered by the insurance policies, or plaintiffs would have specifically claimed the same when they filed their amended complaint in September, 1957.

The defendant is “an agency of and within the Department of Agriculture \* \* \*” of the United States.<sup>2</sup> The form of crop insurance policy is prescribed in a federal regulation which has the force and effect of a statute. It was published in the Federal Register of September 21, 1951 (Vol. 16, Number 184, p. 9628, et seq.). In support of its motion,

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<sup>2</sup> Sec. 1503, Title 7 U.S.C.A.

defendant calls attention to the following provisions:

"4. Insured acreage. The insured acreage with respect to each insurance unit shall be the acreage of wheat seeded for harvest as grain as reported by the insured [63] or as determined by the Corporation, whichever the Corporation shall elect, except that insurance shall not attach with respect to (a) any acreage seeded to wheat which is destroyed (as defined in section 15) and on which it is practical to reseed to wheat, as determined by the Corporation, and such acreage is not reseeded to wheat \* \* \*"

"14. Notice of loss or damage. (a) If any damage occurs to the insured crop during the growing season and a loss under the contract is probable, notice in writing (unless otherwise provided by the Corporation) shall be given the Corporation at the county office promptly after such damage.

"(b) If a loss under the contract is sustained, notice in writing (unless otherwise provided by the Corporation) shall be given the Corporation at the county office within 15 days after threshing is completed or by October 31, whichever is earlier."

"17. Proof of loss. If a loss is claimed, the insured shall submit to the Corporation, on a Corporation form entitled 'Statement in Proof of Loss', such information regarding the manner and extent of the loss as may be required by the Corporation. The statement in proof of loss shall be submitted not later than sixty days after the time of loss, unless the time for submitting the claim is extended

in writing by the Corporation. It shall be a condition precedent to any liability under the contract that the insured establish the production of wheat on the insurance unit, the amount of any loss for which claim is made, and that such loss has been directly caused by one or more of the hazards insured against by the contract during the insurance period for the crop year for which the loss is claimed, and that the insured further establish that the loss has not arisen from or been caused by either directly or indirectly, any of the causes of loss not insured against by the contract \* \* \*” [64]

“28. Modification of contract. No notice to any representative of the Corporation or the knowledge possessed by any such representative or by any other person shall be held to effect a waiver of or change in any part of the contract, or to estop the Corporation from asserting any right or power under such contract, nor shall the terms of such contract be waived or changed except as authorized in writing by a duly authorized officer or representative of the Corporation; \* \* \* ”

The affidavit of Mr. Creighton F. Lawson, to which is attached a sample form of the Wheat Crop Insurance Policy, recites that affiant has personally examined all the files and records of the defendant Corporation and that none of the plaintiffs has furnished a proof of loss to defendant as required by the policies. The same affidavit further states that plaintiff Ralph McLean on April 2, 1956, and plaintiff Lloyd McLean on April 13, 1956, gave notice to defendant of probable loss of winter wheat.

There is no allegation or factual showing of any kind on the part of the plaintiffs that any of them ever furnished either a notice of damage or loss, or proof of loss, with the exception of the two McLeans.

An affidavit filed herein by plaintiff Lloyd McLean states that "he presented a claim for loss of the 1956 crop by winter kill; that the said claim was rejected by Creighton Lawson by letter; \* \* \*" (Emphasis supplied.)

There is also in the file an affidavit of Mr. C. M. Clark, an attorney at law, who attended the April 9, 1956 St. Andrews meeting on behalf of the wheat growers. The affidavit recites that Mr. Lawson said at the meeting that he was authorized "to speak for" the defendant Corporation; that he was in agreement with other representatives of the corporation then present that the loss was not covered by the policies; and that "if claims were filed at that time" they would be denied. Mr. [65] Clark then advised the farmers to "reseed their lost acreage in order to mitigate their damage in view of the repudiation of the contract by Mr. Lawson." The farmers followed his advice and did reseed the lost acreage.

Attached to Mr. Clark's affidavit as exhibits E and F are documents designated in the affidavit respectively as "rejection of the claim presented by Ralph McLean", and "rejection of the claim presented by Lloyd McLean." Exhibit E is a copy of

a letter on the Spokane office letterhead of defendant. It is dated April 12, 1956, is directed to Ralph McLean, and is signed by Creighton F. Lawson, Washington State Director. The first two paragraphs are as follows:

“Our loss adjuster for Douglas County has made a preliminary inspection of your fall seeded wheat crop in response to your notice of material damage filed April 2, 1956. A copy of this preliminary inspection is enclosed.

“Since farmers are reseeding to wheat and it is practical to reseed to wheat in Douglas County, it is a condition of the contract, Section 4, that any destroyed wheat acreage be reseeded, where it is practical to reseed, in order for the insurance to attach to the acreage.”

Exhibit F is a copy of a letter headed and signed the same as Exhibit E, but dated April 16, 1956, and directed to Lloyd McLean. The first paragraph reads as follows:

“This is to acknowledge your notice of loss to your fall seeded wheat crop due to winter kill.”  
(Emphasis supplied.)

The second paragraph is the same as the second paragraph of Exhibit E quoted above.

There is also attached to Mr. Clark’s affidavit, copies of letters marked as exhibits G, H, and I. Exhibit G is a copy of a letter from Mr. Clark to Mr. Lawson as State Director of F.C.I.C., dated May 10, 1956. The first three paragraphs read:

“We represent several farmers in Douglas County

who desired to make claims under their crop policies for damage done to the 1956 crop through winter kill. The claims were to be made under the second stage of coverage, and in reliance on paragraph 16 of the insurance policy.

“Because of the statements made at the St. Andrews meeting about the claims, if made, the farmers could readily see that it would be useless to submit them. [66]

“Our clients therefore have now reseeded the acres killed by the winter and desire that your corporation pay them the cost of reseeded. This cost is estimated to be approximately \$6.00 per acre.”

Exhibit H, a copy of Mr. Lawson’s answering letter to Kimball & Clark, dated May 14, 1956, is as follows:

“This is in reply to your letter dated May 10, 1956 concerning winter damage to fall seeded wheat in Douglas County.

“As you know, the wheat crop insurance policy of the Federal Crop Insurance Corporation provides that insurance does not attach to any acreage which has been destroyed and on which it is practical to reseed to wheat. Since reports from the county extension agent and other agencies indicate that 98 percent of the wheat was reseeded in Douglas County, it would appear that there is no question concerning whether or not it was practical to reseed. Since you have indicated that your clients have reseeded, the insurance remains in force and should any loss occur under the terms of the con-

tract between the time of reseeding and harvest, the crop will be protected.

“There is no provision in the insurance contract to reimburse insureds for the cost of reseeding, other than that the reseeding practice was considered when coverages were established for the county. In counties where reseeding is considered practical, coverages are generally much higher than in counties where it is not practical to reseed.

“Your letter is being forwarded to the manager of the Federal Crop Insurance Corporation in Washington, D. C. for any further comments which he may wish to make.”

Exhibit I is a copy of a letter to Kimball & Clark from the Washington office of the defendant, dated May 21, 1956. Its pertinent part is as follows:

“Our Washington State Director has forwarded for our consideration your letter of May 10, 1956, in regard to claims which several Douglas County wheat farmers expect to litigate, and a copy of his reply dated May 14, 1956.

“We believe Mr. Lawson rather adequately set forth the position of the Corporation under the reseeding requirements of the wheat crop insurance policies in his reply to your letter. There are, however, some points which were not covered and perhaps one of vital importance in this matter which we might call to your attention. This Corporation derives its existence and powers from the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.). To carry out the purposes of this act, the Corporation is authorized and empowered to insure against un-

avoidable loss of designated commodities, including wheat, but there are certain specified limitations of authority including a provision in Section 1508 (a) which reads in pertinent part as follows:

“Insurance provided under this subsection shall not cover losses due to the neglect or malfeasance of the producer, or to the failure of the producer to reseed to the same crop in areas and under circumstances where it is customary to so reseed, or failure of the producer to follow established good farming practices.’ [67]

“The reseeded requirement in paragraph 4(a) of the policy is founded upon the statutory limitation cited and we respectfully submit that the policy necessarily contains such a limitation. It is noted by reference to your letter to Mr. Lawson that you are of the opinion that paragraph 4 of the policy is not controlling in view of the language of paragraph 8 of the policy. We believe it is sufficient at this time to say that this provision must be read in the light of the statute and the corresponding limitation of paragraph 4.

“We note that your clients have now reseeded their acreages killed by the winter and propose to take action to recover the cost of reseeded, estimated to be approximately \$6.00 per acre. Our reaction to this is, and necessarily must be if we are to comply with the law, that this Corporation is without authority to reimburse insureds in such circumstances.

“As of this time insurance is still in force and should there be an insured loss under the terms of



the contract on the acreage as reseeded, the insured involved will, of course, be indemnified upon proof thereof, as required. Otherwise, there is no basis for any claim.”

The form of crop insurance policy here involved, as indicated by the excerpts quoted above, required the insured to give written notice to the corporation of loss or damage and to submit proof of loss. The two are separate and distinct, and serve different purposes. The notice of loss informs the company that the contingency insured against has occurred, while proof of loss supplies evidence of the particulars of the occurrence, and information necessary to enable the insurer to determine its liability, and the amount thereof.<sup>3</sup>

The giving of notice of loss does not dispense with the requirement that proof of loss be submitted.<sup>4</sup> Even as to private insurance corporations, in the absence of waiver or estoppel, there must be at least substantial compliance with a requirement that written proof of loss be furnished to the insured.<sup>5</sup>

In the instant case it appears that plaintiffs Ralph McLean and Lloyd McLean gave notice of

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<sup>3</sup>See Ballentine's Law Dictionary (1930); 45 C.J. S. §981, §982(1)a.

<sup>4</sup>Couch on Insurance, Vol. 7, Sec. 1528; Georgia Home Insurance Co. v. Jones, 135 S.W.2d 947, 951.

<sup>5</sup>Wedgwood v. Eastern Commercial Travelers Acc. Ass'n, 32 N.E. 2d 687; Standard Acc. Ins. Co. v. Cherry, 48 S.W. 2d 755; Milton Ice Co. Inc. v. Travelers Indemnity Co., 71 N.E.2d 232; Brindley v. Firemen's Insurance Co. of Newark, N. J., 113 A.2d 53, 35 N. J. Super. 1.

loss or damage but none of the plaintiffs ever submitted to the defendant any proof of loss. [68]

Plaintiffs rely upon the general principle of insurance law that, if the insurer, during the period in which proofs of loss are to be made, denies liability, the insurer is deemed to be estopped from invoking, or to have waived, the right to demand proofs of loss. But is the principle applicable here, where the insurer is an agency of the United States?

In his affidavit, Mr. Lawson states that "he is absolutely without any authority to either deny a claim or to approve a claim \* \* \*" There is no affirmative showing of the extent of his authority. The statute authorizes the Secretary of Agriculture and the Corporation to issue such regulations as may be necessary (7 U.S.C.A., § 1516 (b)). The form of the policy, the extent and the limitations of the insurance coverage, the requirement as to proof of loss, and the reservations against waiver and estoppel are governed by regulations published in the Federal Register. No state director or other official, surely, would have the authority to cancel or repudiate the insurance contract of the corporation, or to make any arrangement or commitment binding upon the corporation which was contrary to, or not permitted by the governing statutes and regulations. There has not been called to my attention any regulation, statute, or provision of the insurance contract authorizing payment of the cost of reseeding an insured farmer's

wheat crop. How, then, could Mr. Lawson by his conduct and representations create such liability on the part of defendant government agency? The answer is to be found, I think, in the following excerpt from the opinion in *Utah Power & Light Co. v. United States*, 243 U.S. 389, 409, (37 S.Ct. 387, 61 L.Ed. 791), quoted with approval in *United States v. San Francisco*, 310 U.S. 16, 32 (84 L.Ed. 1050, 60 S.Ct. 749):

“\* \* \* the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.”

In *Felder v. Federal Crop Insurance Corporation*, 146 F.2d 638, 640, the Fourth Circuit Court of Appeals applied the principle just stated in a case involving cotton crop insurance, by the same corporation named as defendant here. There the [69] insured grower had not filed a proof of loss within the time required by the policy. The court held that right of recovery was barred and that the requirement had not been waived by action on the part of the County Committee. See also, *Mock v. United States*, 10 Cir., 183 F.2d 174, where it was held that recovery on a wheat crop policy of the same corporation was barred for failure on the part of the insured to submit proof of loss as required by the policy.

In *Federal Crop Insurance Corp. v. Merrill*, 332 U. S. 380, 68 S.Ct. 1, 92 L.Ed. 10, wheat growers

in Bonneville County, Idaho, applied to the County Committee, acting as agent for the Corporation for insurance on a crop of growing wheat. Although the Committee was correctly informed that 400 acres consisted of reseeded winter wheat acreage, it erroneously advised the growers that the entire crop was insurable, and upon its recommendation, the Corporation accepted the application. The crop was destroyed by drought, but the Corporation refused to pay the loss on the ground that the Wheat Crop Insurance Regulations did not authorize insurance of reseeded wheat and, hence, barred recovery as a matter of law. The Supreme Court sustained the contention and reversed the Court of Appeals which had affirmed the District Court. The following language of the opinion, I feel, is applicable in the instant case as well:

“The case no doubt presents phases of hardship. We take for granted that, on the basis of what they were told by the Corporation’s local agent, the respondents reasonably believed that their entire crop was covered by petitioner’s insurance. And so we assume that recovery could be had against a private insurance company. But the Corporation is not a private insurance company. It is too late in the day to urge that the Government is just another private litigant, for purposes of charging it with liability, whenever it takes over a business therefore conducted by private enterprise or engages in competition with private ventures. Government is not partly public or partly private, depending

upon the governmental pedigree of the type of a particular activity or the manner in which the Government conducts it. The Government may carry on its operations through conventional executive agencies or through corporate forms especially created for defined ends. See *Keifer & Keifer v. Reconstruction Finance Corp.*, 306 U. S. 381, 390. Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority." (pp. 383, 384)

Defendant's motion is granted and summary judgment will be entered dismissing the action as to each and all of the plaintiffs.

/s/ SAM M. DRIVER,  
United States District Judge.

Signed January 30, 1958.

[Endorsed]: Filed January 30, 1958.

United States District Court, Eastern District  
of Washington, Northern Division

No. 1435

HAROLD ROBERTS, RALPH McLEAN, ROBERT JESSUP,  
GEO. A. MURISON, ANDREW G. NILLES, H. E. McDON-  
ALD, W. H. McDONALD, M. E. SCHEIBNER, THEO-  
DORE B. RICE, LOREN W. PENDELL, J. E. THOREN,  
E. O. McLEAN, E. G. BRANSCOM, S. A. BUCKINGHAM,  
R. E. BUCKINGHAM, DAVIS BROS., DAVID G. DAVIS,  
T. R. DAVIS, FRANK MILLER, LLOYD McLEAN,  
CLAUDE MILLER, MILLER BROS., E. E. SMITH,  
CLYDE W. MILLER, RUSSELL H. HUNT, EDWIN MIL-  
LER, CLARENCE DAVIS, TERESSA M. DAVIS, EUGENE  
FREDERICK, J. W. BUOB & SONS, JOHN A. DANIEL-  
SON, W. J. HAWES, GEO. JORDAN & SONS, DALE  
LEANDER, LUCILE E. BESEL, CARL H. VIEBROCK,  
ORVAL SUPPLEE, CLARENCE R. EDGEMON, E. V.  
VAUGHN, CHARLES D. OLIN and JAMES EDGEMON,  
CLARENCE ADAMS and DAVID ADAMS, W. H. ASMUS-  
SEN, JOHN CARLOCK, EUGENE CAVADINI, JOHNNIE  
CAVADINI, RICHARD DALING, T. R. HEDGES, SAM  
IVERSEN, F. P. JENKIN, GENE JENKIN, CARL H. KUM-  
MER, MALONE & SON, H. J. MATTHIESEN, MATTHIE-  
SEN BROS., HAROLD PETERSON, HOWARD ROBERTS,  
EUGENE ROBERTS, HOLLIS ROMMEL, GENE WEIMER-  
SKIRCH, E. A. WESSELMAN, PETE WILLIAMS, EMER-  
SON E. WOODS, RICE BROTHERS, BRANSCOM & SON,  
and EINER PETERSEN, Plaintiffs,

vs.

THE FEDERAL CROP INSURANCE CORPORATION, an agency  
of the United States. Defendant.

### ORDER OF SUMMARY JUDGMENT

This matter having come on for argument be-  
fore the above-entitled Court on the 18th day of  
December, 1957, on the defendant's motion for  
dismissal or in the alternative for summary judg-  
ment, the defendant being represented by William

B. Bantz, United States Attorney for the Eastern District of Washington, and Robert L. Fraser, Assistant United States Attorney for said District, and the plaintiffs being represented by Curtiss M. Clark and Ned W. Kimball, attorneys of record, and the Court having heard arguments of counsel, examined briefs submitted, and being fully advised in the premises, and having filed an Opinion on January 30, 1958 stating that the defendant's motion is granted and summary judgment will be entered dismissing the action as to each and all of the plaintiffs, [72]

It Is Hereby Ordered, Adjudged and Decreed that summary judgment is granted to the defendant, The Federal Crop Insurance Corporation, an agency of the United States of America, as to each and all of the plaintiffs, and that the action is herein dismissed as to each and all of the plaintiffs.

Done this 11th day of February, 1958.

/s/ SAM M. DRIVER,  
Judge, U. S. District Court.

Presented by:

/s/ ROBERT L. FRASER,  
Assistant United States Attorney,  
Attorney for Defendant.

[Endorsed]: Filed February 11, 1958.

[Title of District Court and Cause.]

MOTION FOR LEAVE TO FILE  
SECOND AMENDED COMPLAINT

Come now the plaintiffs and moves the Court for reconsideration of its summary judgment herein, for vacation of said judgment and for leave to amend their complaint as follows:

I.

That the United States District Court has jurisdiction of this matter under and by virtue of Title 7, U.S.C.A., Paragraph 1508, sub-section (c), the same being the statutory statement of jurisdiction.

II.

That all of the above named plaintiffs are farmers farming lands in Douglas County, Washington, and all are holders of policies of crop insurance issued by defendant.

III.

That the defendant is a government corporation established under the Department of Agriculture and does business in Douglas County, Washington, through agents duly appointed by said Corporation.

IV.

That each of the above named plaintiffs seeded winter wheat in the late summer of 1955, which said winter wheat was found to be a total loss in the spring of 1956 when the snow melted off the land on or subsequent to March 25, 1956. [74]



V.

That the insurance policy, in the insuring clause, reads as follows:

“In consideration of the representations and provisions in the application upon which this policy is issued, which application is made a part of the contract, and subject to the terms and conditions set forth or referred to herein, the Federal Crop Insurance Corporation (hereinafter designated as the Corporation) does hereby insure \* \* \* (Hereinafter designated as the insured) against unavoidable loss on his wheat crop due to drought, flood, hail, wind, frost, winter-kill, lightning, fire, excessive rain, snow, wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board of Directors of the Corporation.”

VI.

That paragraph entitled “8. Insurance period” of said insurance policy reads as follows:

“Insurance with respect to any insured acreage shall attach at the time the wheat is seeded \* \* \*.”

VII.

That paragraph entitled “16. Time of loss” of said insurance policy reads as follows:

“Any loss shall be deemed to have occurred at the end of the insurance period, unless the entire wheat crop on the insurance unit was destroyed earlier, in which event the loss shall be deemed to have occurred on the date of such damage as determined by the Corporation.”

## VIII.

That paragraph entitled "6. Coverage per acre." reads as follows:

"The coverage per acre established for the area in which the insured acreage is located shall be shown by practice(s) on the county actuarial table on file in the county office. The coverage per acre is progressive depending upon whether the acreage is (a) First Stage—released and seeded to a substitute crop, (b) Second Stage—not harvested and not seeded to a substitute crop, or (c) Third Stage—harvested."

## IX.

That defendant's adjusters in the area had examined the [75] losses beginning on or about April 4, 1956, and had denied coverage of the loss. That on April 9, 1956, the plaintiffs met at St. Andrews, Washington, for the purpose of deciding what course of action to follow. At the said meeting, Creighton F. Lawson, State Crop Insurance Director, who claimed to be authorized to speak for the defendant and who was in fact so authorized, after being informed completely about the situation, stated that if plaintiffs filed claims for the total loss that said claims would be denied by the corporation in accordance with its rules and regulations and its interpretation of the policy.

## X.

That within the time for filing proofs of loss, coverage of plaintiffs claims had been denied by the defendant corporation, and its manager com-

municated this denial to plaintiffs through their attorney by letter dated May 21, 1956.

### XI.

That, relying on the accuracy of Lawson's statement with relation to the defendant's denial of plaintiffs' claims if presented, and the defendant's repudiation of the contract, the plaintiffs, in order to mitigate their damages, were forced to reseed the acreage on which the winter wheat crop had been destroyed even though it was neither customary, practical, or in accord with good farming practices to so reseed. That the cost of reseeding the acres was approximately \$6.50 per acre and plaintiffs reseeded approximately 40,000 acres.

### XII.

That because of peculiar, unpredictable weather circumstances, the spring wheat seeded on the above mentioned acres yielded more than the insured minimum, so plaintiffs' damage caused [76] by the breach of the contract was limited to the additional expense of seeding the spring wheat, which expense would not have been incurred by plaintiffs if defendant had not denied coverage for the winter kill loss.

Wherefore, Plaintiffs pray for damage in an amount equal to the sum determined by multiplying the number of insured acres reseeded by \$6.50 per acre plus interest; for judgment reinstating the insurance contract; for their costs and disbursements herein expended; and for such other and

further relief as to the Court may seem just and equitable.

KIMBALL & CLARK,

/s/ By C. M. CLARK,

Attorneys for Plaintiffs. [77]

[Endorsed]: Filed February 20, 1958.

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[Title of District Court and Cause.]

ORDER DENYING MOTION FOR RECON-  
SIDERATION OF SUMMARY JUDG-  
MENT, FOR VACATION THEREOF, AND  
FOR LEAVE TO FILE SECOND AMEND-  
ED COMPLAINT

The Court granted defendant's motion for summary judgment in the above entitled cause, and order of summary judgment was entered on the 11th day of February, 1958. Plaintiffs have moved the court for reconsideration of said summary judgment, for vacation thereof, and for leave to file a second amended complaint. The court has considered said motion and the records and files herein, and is fully advised in the premises.

It Is Now, Therefore, Ordered that plaintiffs' motion for reconsideration of the entry of summary judgment in the above entitled cause, for vacation of said judgment, and for leave to file a second amended complaint, is hereby denied.

Dated this 21st day of February, 1958.

/s/ SAM M. DRIVER,

United States District Judge.

[Endorsed]: Filed February 21, 1958.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that the above named plaintiffs hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order of Summary Judgment entered in this action on February 11, 1958.

KIMBALL & CLARK,  
/s/ By NED W. KIMBALL,  
Attorneys for Appellants. [93]

[Endorsed]: Filed March 13, 1958.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
Eastern District of Washington—ss.

I, Stanley D. Taylor, Clerk of the United States District Court for the Eastern District of Washington do hereby certify that the documents annexed hereto are the original documents filed in the above-entitled cause, to-wit: Date Filed: 9/4/56—Title of Document: Complaint. 9/4/56—Summons. 9/4/56—Affidavit of Service by Mailing. 9/4/56—Motion and Affidavit for Removal. 9/4/56—Certificate of Service by Mail. 9/4/56—Order for Removal. 9/4/56—Certificate. 9/25/56—Consent to Removal. 10/5/56—Answer (Certificate of

Service by Mail Attached). 11/21/56—Amended Answer; Counter-Claim (with attachments). 1/2/57—Reply to Amended Answer and Counter-Claim. 3/8/57—Consent of Plaintiff for Defendant to File Second Amended Answer and Counter-Claim. 3/20/57—Second Amended Answer and Counter-Claim (with Certificate of Service by Mail Attached). 3/28/57—Reply to Second Amended Answer and Counter-Claim. 9/23/57—Amended Complaint. 12/4/57—Motion to Dismiss or in the Alternative for Summary Judgment (Exhibits A to D and Certificate of Service by Mail attached). 12/18/57—Affidavit—C. M. Clark (Exhibits “E”, “F”, “G”, “H”, and “I” attached). 12/18/57—Affidavit—Lloyd McLean. 1/30/58—Opinion of the Court. 2/11/58—Order of Summary Judgment. 2/20/58—Motion for Leave to File Second Amended Complaint. 2/20/58—Exceptions to the Order of Summary Judgment and Opinion of the Court. 2/21/58—Order Denying Motion for Reconsideration of Summary Judgment, for Vacation Thereof, and for Leave to File Second Amended Complaint. 3/12/58—Appeal Bond (Civil). 3/13/58—Notice of Appeal. 3/26/58—Praecipe for Transcript on Appeal. 4/4/58—Appellees’ Designation of Record on Appeal (Certificate of Service by Mail Attached).

and that the same constitute the record for hearing of the appeal from the Order of Summary Judgment of the United States District Court for the Eastern District of Washington, as called for

in the Appellants' Praecipe for Transcript on Appeal and Appellees' Designation of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Spokane in said District, this 18th day of April, 1958.

/s/ STANLEY D. TAYLOR,  
Clerk.

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[Endorsed]: No. 16002. United States Court of Appeals for the Ninth Circuit. Harold Roberts, et al., Appellants, vs. Federal Crop Insurance Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed: April 21, 1958.

Docketed: April 30, 1958.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In The United States Court of Appeals  
For The Ninth Circuit

No. 16002

HAROLD ROBERTS, RALPH McLEAN, et al.,  
Plaintiffs-Appellants,

vs.

THE FEDERAL CROP INSURANCE COR-  
PORATION, an agency of the United States,  
Defendant-Respondent.

APPELLANTS' STATEMENT OF POINTS

Come now the appellants by their attorneys, Kimball & Clark, and list the following points upon which the appellants intend to rely:

(1) That the contract of insurance issued by the Federal Crop Insurance Corporation expressly covers the loss by winter-kill of winter wheat.

(2) That the insured's, appellants herein, suffered total loss of winter wheat by winter-kill.

(3) That any inconsistencies or ambiguities in the insurance contract must be construed in favor of the insureds, and that under the contract the loss is specifically covered.

(4) Paragraph 8 of the insurance contract provides that the crop insurance policy as issued by the Federal Crop Insurance Corporation covers the crop from the time it is seeded, and Paragraph



16 of the insurance contract provides that the loss shall be deemed to have occurred when the entire crop is destroyed.

(5) That the Federal Crop Insurance Corporation, by its authorized agents, waived the requirement of formal proof of loss and that the Federal Crop Insurance Corporation is estopped to rely on the requirement of filing formal proofs by their rejection of the plaintiffs' claims by authorized agents of the Federal Crop Insurance Corporation within the time provided for filing proofs of loss.

(6) That the allegations in the complaint fully state a cause of action within the express provisions of the insurance contract and as shown by the exhibits in the record.

(7) That the summary judgment as granted by the Court was in error and that this decision should be reversed and the matter returned to the district court for trial.

Dated the 19th day of May, 1958.

KIMBALL & CLARK,  
/s/ By NED W. KIMBALL,  
Attorneys for Plaintiffs-  
Appellants.

[Endorsed]: Filed May 21, 1958. Paul P. O'Brien, Clerk.

